

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlord on May 13, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on May 2, 2011. The landlord also sought a Monetary Order for the unpaid rent, late fees and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on May 18, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent, late fees, and filling fee for this proceeding, and authorization to retain the security deposit in set off.

### **Background and Evidence**

This tenancy began on February 15, 2011. Rent is \$675 per month and the landlord holds a security deposit of \$337.50 paid on February 14, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenants had failed to pay the rent due on May 1, 2011.

At the time of the hearing on June 9, 2011, the May 2011 rent remained unpaid, the tenants had not paid rent for June 2011 and they remained in possession of the rental unit.

Therefore, the landlord seeks an Order of Possession and a Monetary Order for the rent for May and June 2011 and late fees of \$25 for each of the two months as prescribed in the rental agreement.

## Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due. Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not make application to dispute the notice and I accept the evidence before me that the rent was not paid within five days of receipt of the notice.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was May 15, 2011 taking into account the three days for deemed service of a notice served by posting on the door.

Therefore, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I find that the landlord is entitled to a Monetary Order for the unpaid rent for May and June 2011 with late fees.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants. I further find that the landlord is entitled to retain the security deposit in set off.

The Monetary Order is calculated as follows:

Rent for May 2011	\$ 675.00
Late fee for May 2011	25.00
Rent/loss of rent for June 2011	675.00
Late fee for June 2011	25.00
Filing fee	50.00
Sub total	\$1,450.00
Less retained security deposit (No interest due)	- 337.50

<b>TOTAL</b>	<b>\$1,112.50</b>
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## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

In addition to authorization to retain the tenant's security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,112.50**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 9, 2010