

## **DECISION**

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

### **Introduction**

This application was brought by the landlord on August 3, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent and a one-month Notice to End Tenancy for cause, both dated and served in person on July 2, 2011. The landlord also sought Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act*, to permit the landlord to amend her application to add a request for authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the landlord advised that the tenants have left the rental unit and an Order of Possession is no longer required. While the landlord submitted some evidence in support of claims for damage to the rental unit, those cannot be addressed in the present hearing as the hearing documents served on the tenants had not raised the damage claims.

Despite having been served with the Notice of Hearing in person on August 7, 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 now requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent, recovery of the filing fee and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on April 24, 2011. Rent was \$700 per month and the landlord holds a security deposit of \$350 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the 10-day Notice to End Tenancy of July 2, 2011 had been served after the tenants had a rent shortfall of \$50 from the rent due on June 1, 2011 and they had not paid the rent for July 2011. In the interim, those amounts remain outstanding and the tenants did not pay rent for August 2011.

The landlord gave further evidence that the tenants had vacated the rental unit on August 6, 2011 with giving notice, without providing a forwarding address or returning the keys to the rental unit. In addition, they have left some personal property in the rental unit and in the yard including a car.

## **Analysis**

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any alleged non-compliance of the landlord with the legislation or rental agreement, for which other remedies are available.

Section 7 of the *Act* provides that if one party to a rental agreement suffers a loss due to the non compliance of the other with the legislation or rental agreement, the non complaint party must compensate them for the loss.

Section 67 of the *Act* authorizes the director's delegate may determine the amount owed under such circumstances and issue an order for payment.

In the present matter, find that the tenants owe the landlord the \$50 rent shortfall from June 2011 and \$700 for each of July and August 2011.

As the application has succeeded, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants and as authorized under section 72 of the *Act*, I order that the landlord may retain the security deposit in set off.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Rent shortfall for June 2011	\$ 50.00
Rent for July 2011	700.00
Rent for August 2011	700.00
Filing fee	50.00
Sub total	\$1,500.00
Less retained security deposit (No interest due)	- 350.00
<b>TOTAL</b>	<b>\$1,150.00</b>

### **Conclusion**

In addition to authorization to retain the tenants' security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,150.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make a further application to claim for the damages ascertained following the end of the tenancy.

September 2, 2011