

## **Decision**

**Dispute Codes:** CNC, FF / OPR, MNR, FF

### **Introduction**

This hearing was convened in response to 2 applications: i) by the tenants for cancellation of a notice to end tenancy / and recovery of the filing fee; ii) by the landlord for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee. The landlord attended the hearing and gave affirmed testimony.

Despite scheduling of the hearing in response to applications by both parties, and despite the landlord's service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenants did not appear.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the original fixed term of tenancy is from April 1, 2010 to March 31, 2011. Thereafter, the tenancy agreement provides that the tenancy will continue on a month-to-month basis. Monthly rent of \$950.00 is shown as payable in advance on the first day of each month, and a security deposit of \$475.00 was collected on March 28, 2010. By way of an addendum to the tenancy agreement, the tenants agreed to pay 50% of the monthly cost of hydro and gas.

Arising from rent or utilities which remained overdue in the amount of \$500.87, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated November 23, 2011. A copy of the notice was submitted into evidence. Subsequently, while the tenants filed an application to dispute the notice on November 25, 2011, they failed to attend the hearing. The landlord testified that the tenants made no further payment toward rent or utilities following issuance of the 10 day notice, and they began moving their possessions out of the unit on or about December 3, 2011. The landlord also testified that while the tenants do not now reside in the unit, they have not removed all of their possessions. The landlord stated that the tenants have not provided a forwarding address, however, mail is being forwarded to them by Canada Post.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent or utilities dated November 23, 2011. The tenants did not pay the outstanding rent or utilities within 5 days of receiving the notice. Further, while the tenants applied to dispute the notice, they did not attend the hearing and have partially vacated the unit. In sum, the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$1,550.87. This is comprised of \$500.87 as shown on the 10 day notice, \$1,000.00 in unpaid rent for December, in addition to the \$50.00 filing fee. The landlord has not presently applied to retain the security deposit.

The tenants' application is hereby dismissed.

### **Conclusion**

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$1,550.87. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Residential Tenancy Act*.

DATE: December 13, 2011

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Residential Tenancy Branch