

## **DECISION**

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

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

On November 1, 2008, the landlord collected a security deposit from the tenants in the amount of \$280.00. The tenancy began on the same day. Rent in the amount of \$520.00 is payable in advance on the first day of each month. The tenants failed to pay rent in the month of January and on January 4, the landlord served the tenants with a notice to end tenancy for non-payment of rent. The tenants further failed to pay rent in the month of February.

The tenants said that they did not receive the notice to end tenancy. The landlord said that on January 3, he tried to serve tenant TJ with the notice to end tenancy in person but he refused to accept it. At the time, tenant TJ said that he would pay the outstanding rent by January 4. On January 4, the tenants did not pay the outstanding rent. So the landlord posted the notice to end tenancy on the tenants' door. The landlord's wife, DB, testified as a witness. She said that on January 3, she prepared the notice to end tenancy and gave it to her husband to serve the tenants. Later, her husband returned citing that the service was unsuccessful as tenant TJ refused to accept the notice to end tenancy. Based on the above, I find that the landlord has proven that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants have not paid the outstanding rent and have not applied for dispute resolution to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts, I find that the landlord is entitled to an order of possession. The tenants must be served with the order of possession. 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.

The landlord is seeking to recover from the tenants outstanding rent for the month of January in the amount of \$520.00. The tenants said that they paid the landlord the January rent in cash but they did not give a date for such payment. When asked why they did not pay the rent by check especially when there was a dispute, the tenants acknowledged having a checking account but said that they did not have any checks. They explained that they did not want checks in the rental unit in fear of having them stolen. I do not find the tenants' explanation in this regard to be satisfactory. At the same time, no other evidence was adduced to prove the tenants' payment of the January rent. Accordingly, I find the tenants not to have proven that they had paid the January rent.

The tenants are currently still living in the rental unit. The landlord is therefore seeking to include a claim for loss of income for the month of February in the amount of \$520.00. I find that the tenants should reasonably have known that the landlord could not re-rent the unit while they were still in residence and I allow the claim for a further \$520.00.

The landlord is also seeking to recover late payment charges of \$20.00 for each of the months of January and February. I note that clause 2 of the addendum to the tenancy agreement does state the applicability of such charges. I therefore allow a claim of \$40.00 as late payment charges.

Based on the above, I find that the landlord has established a claim for \$520.00 in unpaid rent, \$520.00 in loss of income and \$40.00 in late payment charges. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$280.70 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$849.30. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 24, 2009.