

## **DECISION**

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

### **Introduction**

By application of July 27, 2011, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on July 15, 2011 by registered mail and a Monetary Order for the unpaid rent. In addition, I have exercised the discretion granted under section 64(3)(c) to permit the landlord to amend the application to request 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 July 27, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, hearing proceeded in their absence.

### **Issues to be Decided**

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

### **Background and Evidence**

This tenancy began on November 15, 2011. Rent is \$3,100 per month and the landlord holds a security deposit of \$1,550.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of July 15, 2011 had been served after the tenants had failed to pay rent for May, June and July of 2011.

In the interim, the tenants have paid the rent for July 2011, but May and June remain outstanding and the tenants have remained in the rental unit and have not paid the rent for August 2011.

## 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 contest the Notice to End Tenancy and rent remains unpaid. Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was August 1, 2011.

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

I further find that the landlord is entitled to a Monetary Order for the three months' rent and authorization to retain the security deposit in set off and, as the application has succeeded, I find that the landlords are is also entitled to recover the \$100 filing fee form the tenants.

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

May 2011 rent	\$3,100.00
June 2011 rent	3,100.00
August 2011 rent	3,100.00
Filing fee	100.00
Sub total	\$9,400.00
Less retain security deposit (No interest due)	- 1,550.00
<b>TOTAL</b>	<b>\$7,850.00</b>

## 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 security deposit in set off against the balance owed, the landlord's copy of this decision is also accompanied by a Monetary Order for \$7,850.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

August 26, 2011