

## **Decision**

### **Dispute Codes:**

OPR MNR MNSD FE

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This Dispute Resolution Hearing was convened to deal with an Application by the Landlord for an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 8, 2008, for a monetary order for unpaid rent, to keep the security deposit; and to recover the filing fee for the cost of this application.

I reviewed the evidence on the case file prior to the Hearing. The Landlord gave affirmed evidence and this Application proceeded on its merits.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the Landlord is entitled to an Order of Possession under section 55 of the Act, based on the 10 day Notice to End Tenancy;
- Whether the Landlord is entitled to a monetary order under section 67 of the Act; and
- Whether the Landlord is entitled to recover the filing fee of \$50.00 from the Tenant.

## **Background and Evidence**

The Landlord testified that she served the Tenant with the Notice to End Tenancy dated December 8, 2008 by posting it on the Tenant's residence door on December 8, 2008.

The Landlord testified that she mailed the Tenant the Application for Dispute Resolution filed on December 17, 2008, on December 19, 2008, by sending the documents via registered mail to the rental unit. She provided a tracking number for the registered mail.

The Landlord testified that the Tenant paid a security deposit on February 14, 2004, in the amount of \$350.00. The subsidized monthly rent is \$275.00 and is due on the first of each month. The Landlord submitted that the Tenant has failed to pay rent for the months of December, 2008, and January, 2009. The Landlord testified that the total amount owing to date is \$550.00.

## **Analysis**

The Tenant was served with the Notice to End Tenancy on December 8, 2008, by posting the Notice on the Tenant's door. Pursuant to section 90 of the Act, service of a document in this manner is deemed to be served on the 3<sup>rd</sup> day after it is posted. I find that the Tenant was served with the Notice to End Tenancy on December 11, 2008.

The effective date for the end of the tenancy was December 21, 2008. The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of December 21, 2008. I therefore find that the Landlord is entitled to an Order of Possession.

The Canada Post website tracking search indicates an attempted delivery of the Application was made on December 29, 2008. On December 29, 2008, a notice card was left at the recipient's address indicating where the documents could be picked up. Pursuant to section 90 of the Act, service of a document if given or served by mail is

deemed to be received on the 5<sup>th</sup> day after it is mailed. I find that the Tenant was served with the Application and Hearing package on January 3, 2009 and, although duly served, did not attend the Hearing.

The Landlord was successful in today's application. Therefore, the Landlord is entitled to recover her filing fee in the amount of \$50.00.

I find that the the Landlord has established a total monetary claim of \$600.00, calculated as follows:

Rent arrears for December, 2008	\$275.00
Loss of rent for January, 2009	\$275.00
Recovery of filing fee for this application	<u>\$50.00</u>
TOTAL	\$600.00

I order that the Landlord retain the security deposit of \$350.00, together with accrued interest in the amount of \$12.39 in partial satisfaction of the claim leaving a balance due to the Landlord of \$237.61.

### **Conclusion**

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an Order of Possession and I hereby issue the order. The Tenant will have two days from the date of service of the order to vacate the premises. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord a monetary order under section 67 of the *Act* for \$237.61. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

January 20, 2009

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