

## **Decision**

**Dispute Codes:** OPR MNR MNSD FF

### **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.

I reviewed the evidence on the case file prior to the Hearing. The Landlord’s agents, JM and PL, and the Tenant gave affirmed testimony 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:

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a monetary order for unpaid rent and to apply the security deposit and accrued interest thereon to the amount owing?
- Is the Landlord entitled to recover the filing fee of \$50.00 from the Tenant?

### **Background and Evidence**

#### **Landlord’s evidence:**

PL testified that she served the Tenant personally with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2008, at the rental unit on December 4, 2008 at 7:00 p.m.

JM testified that she mailed the Tenant today’s Application and the Notice of Hearing package by registered mail on January 9, 2009. JM provided a Canada Post tracking number for the registered mail package.

JM testified that the tenancy started on November 1, 2007, and was a fixed term tenancy ending October 31, 2008. The tenancy has continued on a month to month basis. Monthly rent for the rental unit is \$1,190.00, and rent is due on the 1st day of the month. JM testified that the Tenant had a \$40.00 credit for the month of December, 2008 and paid \$100.00 towards December's rent, leaving a balance owing for the month of December of \$1050.00. JM testified that the Tenant has not paid rent for the month of January, 2009, and is still living in the rental unit. JM requested an additional \$1,190.00 for loss of February's rent. JM asked for an Order of Possession.

#### Tenant's evidence

The Tenant confirmed service of the Notice to End Tenancy and the Application and hearing package, as set out by the Landlord's agents above. The Tenant agreed that she is in arrears of \$1,050.00 for December, 2008 and \$1,190.00 for January, 2009. The Tenant testified that she has not made any application to set aside the Notice to End Tenancy. The Tenant testified that she has lost her job and is waiting for a Government of Canada issued tax credit in order to pay her rent arrears. The Tenant testified that she called Revenue Canada and was advised that the tax credit will not be mailed to her until March 20, 2009.

#### Analysis

On the affirmed testimony of the parties, I am satisfied that the Tenant was duly served with the Notice to End Tenancy and the Application for Dispute Resolution.

The Tenant received the Notice to End Tenancy on December 4, 2008 and therefore the effective end of tenancy is December 14, 2008. The Tenant did not pay the amount owing to the Landlord and did not dispute the Notice within 5 days of receiving the Notice. Therefore under Section 46 of the Act, the Tenant is presumed to have accepted that the Tenancy ended on December 14, 2008. The Landlord is entitled to an immediate order of possession and I make that order.

With respect to the Landlord's application for a monetary order, I find that the Landlord is entitled to a monetary order for loss of rent for the months of December, 2008 and January, 2009, in the amount of \$2,240.00.

The Landlord has been successful in this application and is entitled to recover the filing fee from the Tenant.

The Landlord requested loss of rent for the month of February, 2009. It is premature to allow the Landlord's loss for all of February, 2009 rent, as it is still early in the month and the Landlord may be able to re-rent the suite prior to February 28, 2009. I find that the Landlord is entitled to loss of rent to today's date for the month of February, 2009 and give the Landlord leave to re-apply for further loss of February rent.

I find that the the Landlord has established a total monetary claim of \$2,485.62 calculated as follows:

Unpaid rent for December, 2008 and January, 2009	\$2,240.00
Loss of rent for February1 - 5, 2009	\$195.62
(\$1190 x 12 months / 365 days = \$39.123 per diem)	
Recovery of the filing fee for today's application:	<u>\$ 50.00</u>
TOTAL	\$2,485.62
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I order that the Landlord retain the security deposit of \$575.00, together with accrued interest in the amount of \$10.09 in partial satisfaction of the claim leaving a balance due to the Landlord of \$1,900.53.

## **Conclusion**

I grant the Landlord a monetary order under section 67 of the Act for \$1,900.53. 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.

I grant the Landlord leave to re-apply for damages for loss of rent incurred after February 5, 2009.

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

February 5, 2009

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