

## **DECISION**

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

### **Introduction**

This is the Landlords' application for an Order of Possession for unpaid rent; a monetary order for unpaid rent and loss of rent; to keep the security deposit; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order and if so, in what amount?
- Is the Landlord entitled to keep the security deposit paid by the Tenant?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

### **Background and Evidence**

#### **Facts on which the parties agreed:**

- The Landlord mailed the Tenant the Notice to End Tenancy on August 5, 2009, by registered mail, to the Tenant's residential address.
- Monthly rent for the rental unit is \$1,200.00 per month, due on the first day of each month. The tenancy commenced on July 1, 2009.
- The Tenant paid a security deposit in the amount of \$600.00 on June 24, 2009.
- On the 4<sup>th</sup> of August, 2009, the Tenant owed the Landlord unpaid rent in the amount of \$500.00 for July and \$1,200.00 for August.
- The Tenant has made the following payments towards the unpaid rent since August 4, 2009:

Date	Amount paid	Balance Owing
August 4, 2009		\$1,700.00
August 24, 2009	\$150.00	\$1,550.00

September 2, 2009	\$250.00	\$1,300.00
September 3, 2009	\$600.00	\$700.00
September 23, 2009	\$200.00	\$500.00

- The Landlord accepted the payments, but did not reinstate the Tenancy.
- The Tenant remains in the rental unit.

The Landlord gave the following testimony:

The Landlord requested an Order of Possession and Monetary Order for \$500.00 in unpaid rent for August, together with loss of rent for the months of September and October, for a total Monetary Order in the amount of \$2,900.00

The Tenant gave the following testimony:

The Tenant stated that he lost his job, but started a new full-time job on October 2, 2009. The Tenant stated that he could pay the Landlord the full amount owing by the end of October, 2009.

**Analysis**

Section 26(1) of the Act provides that rent must be paid when it is due, unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the Tenant did not have a right to deduct any sum from the rent.

The Landlord served the Tenant with the Notice to End Tenancy by registered mail on August 5, 2009. Service in this manner is deemed received by the Tenant 5 days after mailing the Notice, or August 10, 2009. Therefore the effective date of the end of tenancy was August 20, 2009. The Tenant had 5 days after receiving the Notice to pay all of the amount owing or to dispute the Notice. The Tenant did not pay the outstanding rent, or file for dispute, and is therefore conclusively presumed to have accepted that the tenancy ended on August 20, 2009. The Landlord is entitled to an Order of Possession and I make that order.

Based on the testimony of both parties, I find that the Landlord has established a monetary claim for \$500.00 in unpaid rent for August, together with loss of rent for the month of September. It is premature to allow the Landlord loss of rent for the month of October, and I allow the Landlord a prorated amount from October 1, 2009 to October 19, 2009. The Landlord is at liberty to apply for loss of rent for the remainder of October, should she be unable to re-rent the rental unit before November 1, 2009.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit in partial satisfaction of her monetary claim. No interest has accrued on the security deposit.

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

The Landlord has established a monetary claim as follows:

Unpaid rent for August, 2009	\$500.00
Loss of rent for September, 2009	\$1,200.00
Prorated loss of rent for October 1 to 19, 2009 (\$38.71 per day)	\$735.49
Recovery of the filing fee	\$50.00
SUBTOTAL	\$2,485.49
Less security deposit	-\$600.00
<b>TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET OFF</b>	<b>\$1,885.49</b>

## **Conclusion**

I hereby grant the Landlord an Order of Possession effective **2 days after service upon the Tenant**. 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.

I hereby grant the Landlord a Monetary Order in the amount of \$1,885.49. 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.

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*.

Dated: October 9, 2009.

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