

## Decision

**Dispute Codes:** OPB, OPC, MND, MNSD, FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for damages; to set-off the security deposit against the monetary award in partial satisfaction of the monetary award; and to recover the filing fee for the cost of the application from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Tenant provided no documentary evidence. All parties gave affirmed evidence and this matter proceeded on its merits.

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

- (1) The Landlord's entitlement to an Order of Possession.
- (2) The Landlord's entitlement to a Monetary Order.

### **Background and Evidence**

The Landlord provided a copy of the Tenancy Agreement in evidence. The tenancy started on June 1, 2008, initially as a one year term lease. Following the term of the lease, the tenancy continued on a month-to-month basis. Rent for the rental unit is \$650.00 per month, due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 on June 11, 2008. The rental unit is one of four suites in the rental property.

### **Landlord's testimony**

The Landlord testified that he served the Tenant with the Notice to End Tenancy for Cause, by personally serving the Tenant at the Tenant's residence, on October 6, 2009, at approximately 7:30 p.m.

The Landlord testified that the Tenant is chronically late paying his rent, as follows:

Monthly rent due	Date on which total monthly rent received
February 1, 2009	February 25, 2009
March 1, 2009	March 27, 2009
April 1, 2009	May 6, 2009
May 1, 2009	June 1, 2009
July 1, 2009	July 20, 2009
August 1, 2009	August 30, 2009
September 1, 2009	September 8, 2009
October 1, 2009	October 13, 2009

The Landlord testified that the Tenant still owes \$200.00 for November's rent.

The Landlord testified that guests allowed on the rental property by the Tenant had damaged the common hallway walls, the front door, the back door, the Tenant's door, the door jams, and windows at the rental property. The Landlord provided estimates for the repair of these items and other miscellaneous items for which the Landlord was not seeking to recover compensation from the Tenant. The Landlord testified that he has already paid \$5,000.00 for the repair of these items.

The Tenant gave the following testimony:

The Tenant testified that the Landlord did not serve him personally on October 6, 2009. The Tenant stated that the Notice to End Tenancy was left wedged in the door frame at his residence on October 6, 2009.

The Tenant agreed that he was late paying rent as alleged. He stated that his co-tenants were responsible for part of the rent payments, but that the Landlord had not signed their applications in order that the Ministry would start paying the co-tenants' housing allowance.

The Tenant denied that the damage to the rental property was caused by the Tenant or by guests of the Tenant. The Tenant testified that the damage was caused by strangers to the Tenant and that he had to call the police because the strangers had damaged the rental property.

The Landlord gave the following rebuttal to the Tenant's testimony:

The Landlord testified that did not give permission for any other tenants to live in the rental unit. He stated that the Tenancy Agreement provides that there is only one tenant allowed in the rental unit and that the Tenant cannot allow the rental unit to be occupied by anyone else without the Landlord's written consent.

The Landlord testified that the Tenant had admitted that the people who damaged the property were guests or invitees of the Tenant.

The Landlord's Witness CT gave the following testimony:

The Witness is a tenant in the rental property and lives in a suite on the lower floor of the rental property. The Witness has lived at the rental property for approximately 8 years. The Witness had to call the police because there were people kicking in doors, whistling and yelling for the Tenant, calling him by his name. The Witness believes that the people were friends of the Tenant because there is no one else who lives in the rental property with the same first name as the Tenant. When questioned by the Tenant's advocate, the Witness stated that the police have been called 3 times over the past 8 years as a result of a "domestic" taking place at her suite.

The Landlord's witness ML gave the following testimony:

The Witness lives in the rental property, on the same floor as the Tenant. The Witness has lived at the rental property for 2 ½ years. The Tenant had friends coming and going day and night. The Tenant's friend damaged the walls and the doors at the rental property. The Witness filled in a police report about the incident. It has been relatively quiet at the rental property for the past two months.

The Tenant's advocate gave the following submissions:

The Tenant experienced some difficulty getting an advocate, and the advocate was only appointed last Monday, which did not allow for much time for the advocate to prepare for the Hearing. The Tenant did not provide documentary evidence to the file, or to the Landlord, because the Tenant was not familiar with the Act or Rules of Procedure.

The Landlord gave the following final submissions:

The Landlord testified that he has spoke often to the Tenant about the hearing and the damages he was claiming. The Landlord submitted that the Tenant was fully aware of his rights.

**Analysis**

Whether the Tenant was served in person, or by posting the notice at the Tenant's door, the Tenant affirmed that he received the Notice, which is effective one full month after the Tenant is served. Therefore, I find the effective date of the Notice is November 30, 2009.

Based on the testimony of the parties, the Landlord's Witnesses, and the documentary evidence provided by the Landlord, I am satisfied that the Tenant has been repeatedly late paying rent. I am also satisfied, on the balance of probabilities, that persons permitted on the property by the Tenant have caused extraordinary damage to the rental unit.

Therefore, I find that the Notice to End Tenancy for Cause is a valid notice and the effective end of tenancy is November 30, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

The Landlord provided evidence with respect to two items that were not claimed on his Application for Dispute Resolution filed October 23, 2009. Specifically, they are estimates for replacing casings around three doors, and for changing the fascia on the front balcony. The estimate of \$900.00 for repairing the drywall included the fascia. Therefore, I have not allowed the Landlord's claims for repairing the drywall, replacing the fascia and replacing the casings. The Landlord is at liberty to make another application with respect to these items.

With respect to the Landlord's monetary claim, based on the photographs and the estimate provided in evidence, I find that the Landlord has established a monetary claim as follows:

Parts and labour to replace broken windows (per receipted invoice)	\$419.17
<del>Replace casings around 3 doors, inside and out (per estimate)</del>	<del>\$400.00</del>
Replace 3 fire doors (per estimate)	\$2,000.00
<del>Repair drywall (per estimate)</del>	<del>\$900.00</del>
TOTAL monetary award for damages	\$3,719.17
	<u>\$2,419.17</u>

The Landlord has been successful in his application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenant.

Pursuant to Section 72 of the Act, the Landlord may deduct the security deposit, together with any accrued interest, in partial satisfaction of the monetary claim.

The Landlord has established a monetary order, as follows:

Damages to the rental property	\$3,719.17
	\$2,419.17
Recovery of the filing fee	\$50.00
Less security deposit and interest of \$2.72	<u>&lt;\$327.72&gt;</u>
TOTAL amount due to Landlord after set off	\$3,441.45
	<u>\$2,141.45</u>
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### **Conclusion**

I hereby grant the Landlord an Order of Possession **effective two days from service of the order 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 ~~\$3,441.45~~ \$2,141.45 against the Tenant. 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.

The Monetary order issued November 30, 2009, in the amount of \$3,441.45 is hereby cancelled and of no force or effect.

The Landlord has proven his claim with respect to the Tenant's responsibility for replacing the drywall, but has not substantiated the cost of replacing the drywall. The Landlord's application to recover the cost of replacing the drywall is dismissed with leave to reapply. The Landlord is at liberty to apply to recover the cot of replacing the casings around the three doors and for changing the fascia on the front balcony.

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.

November 30, 2009

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**Date of Decision**

CORRECTED December 16, 2009