

## Decision

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

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for damages; 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. The Landlord's agents gave affirmed evidence and this matter proceeded on its merits.

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

- (1) service of the Notice to End Tenancy for Cause and the Notice of Hearing documents upon the Tenant; and
- (2) the Landlord's entitlement to a Monetary Order and Order of Possession.

### **Background and Evidence**

#### **RE: Service issues**

The Landlord's agent SR testified that she served the Tenant with the Notice to End Tenancy for Cause on September 25, 2009, in the late afternoon, by handing the Notice to the Tenant at his residence.

The Landlord's agent SR testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail, and that a search of the Canada Post tracking system indicates that the Tenant received the documents on October 26, 2009. The Landlord submitted a copy of the registered mail receipt and tracking number together with the a

print out of the Canada Post search indicating the Tenant's receipt of the documents on October 26, 2009.

RE: Landlord's Claim

The Landlord's agents testified that the Tenant placed an emergency call on February 10, 2009. The Fire Department attended at the rental unit and took the Tenant to the Hospital for treatment. The Fire Department alerted the Landlord to the condition of the rental unit, indicating that the conditions inside the rental unit were unhealthy. As a result, the Landlord inspected the rental unit and issued a Notice to End Tenancy for Cause. This Notice was not pursued, as the Landlord and Tenant entered into an agreement with respect to the damages the Tenant had done to the rental unit. The rental unit underwent a biohazard clean-up including: cleaning and sanitizing areas affected with blood and feces; removing and replacing carpet and underlay; disposal of 100+ hypodermic needles; and removal of miscellaneous garbage. The Tenant agreed to pay the Landlord the amount of \$3,145.28 at the rate of \$40.00 per month. A copy of the Fire Department's Incident Report, the Chargeback Agreement, invoices for the biohazard cleanup, and photographs of the rental unit were entered in evidence.

On September 18, 2009, the Landlord's agent inspected the rental unit after giving the Tenant due Notice and found it to be in worse condition than it was in February, 2009. The Landlord issued another Notice to End Tenancy for Cause on September 25, 2009. The Landlord's agent had discussions with the Tenant, who advised that he would be complying with the Notice and moving out of the rental unit by October 31, 2009. The Tenant changed his mind and remains in the rental unit. The Landlord submitted a copy of the Notice to End tenancy issued September 25, 2009, together with photographs of the rental unit taken in September, 2009, into evidence.

The Landlord's agent testified that a portion of her claim for damages is based on an estimate which was calculated based on the cost of the previous remediation. The Landlord is requesting a Monetary Order, calculated as follows:

Balance owing from Agreement reached between the parties on July 7, 2009	\$3,025.27
Estimate for biohazard clean-up	\$2,300.00
Replacement of carpet	\$800.00
Disposal of material	\$60.00
Recovery of filing fee	<u>\$50.00</u>
TOTAL MONETARY CLAIM	\$6,235.27

### **Analysis**

Based on the affirmed testimony of the Landlord's agent SR, I am satisfied that the Tenant was served with the Notice to End Tenancy on September 26, 2009. The Tenant did not dispute the Notice to End Tenancy within 10 days of receipt of the Notice and therefore, pursuant to Section 47(6) of the Act, is deemed to have accepted that the tenancy ended on the effective date of the Notice. The Landlord is entitled to an immediate Order of Possession, and I make that order.

Based on the affirmed testimony of the Landlord's agent SR and the documentary evidence provided, I am satisfied that the Tenant was served with the Notice of Hearing Documents on October 26, 2009. Despite being served with the Notice of Hearing Documents, the Tenant did not sign into the conference, and the Hearing continued in his absence.

Based on the testimony and evidence provided by the Landlord, and in the absence of any contradictory testimony from the Tenant, I am satisfied that the Landlord has proven its monetary claim. The Tenant signed an agreement acknowledging his responsibility for damages to the rental unit in February, 2009, in the amount of \$3,145.28. I accept the Landlord's agent's affirmed testimony that the Tenant has paid \$120.00 towards

satisfaction of this debt. The photographs provided in evidence indicate that the rental unit was in as bad a condition, if not worse, in September as it was in February, 2009. The invoices provided by the Landlord support the Landlord's estimates of the cost to remediate the rental unit.

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

### **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 \$6,235.27 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.

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.

December 3, 2009

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Date of Decision