

## Decision

### Dispute Codes:

OPR; MNR; MNSD; MNDC, FF

### Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent, to apply the security deposit against its monetary award; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord 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 recover the cost of the filing fee from the Tenant?

### Background and Evidence

#### The Landlord's agent gave the following testimony and evidence:

The Landlord's agent served the Tenant with the Notice to End Tenancy for Unpaid rent by posting the Notice on the Tenant's door on November 2, 2009, in the morning.

The Landlord's agent mailed the Notice of Hearing documents to the Tenant, by registered mail, on November 26, 2009, to the Tenant's residence.

The Tenant has not paid any of the arrears of rent and remains in the rental unit. The Landlord's agent testified that monthly rent was \$660.00, due on the first day of each month. The Landlord's agent testified that the tenancy began on October 15,

2007. The Landlord's agent did not know if there was a written tenancy agreement, and stated that there was no tenancy agreement on the Tenant's file.

The Landlord applied for a monetary award for unpaid rent, as follows:

Month	Rent paid	Rent owing
Balance brought forward		\$130.00
March, 2009	\$640.00	\$20.00
April, 2009	\$640.00	\$20.00
May, 2009	\$640.00	\$20.00
June, 2009	\$ .00	\$660.00
July, 2009	\$640.00	\$20.00
August, 2009	\$640.00	\$20.00
September, 2009	\$ .00	\$660.00
October, 2009	\$ .00	\$660.00
November, 2009	\$ .00	\$660.00
Total balance outstanding		\$2,870.00

The Landlord's agent testified that she has been an employee of the Landlord's since February, 2009, and is not certain of several facts with respect to the tenancy. She stated that she did not know how much the Tenant paid as a security deposit, or on what month it was paid. The Landlord claimed that the Tenant was in arrears in the amount of \$130.00 for rent due prior to March, 2009, but the Landlord's agent stated that she did not know the particulars about that outstanding rent.

The Tenant's agent gave the following testimony:

The Tenant's agent stated that the Tenant had been unemployed, but was working again as of yesterday.

The Tenant's agent testified that she did not know for certain how much the Tenant had paid as a security deposit, but she thought it was \$310.00. The Tenant's agent testified that the Tenant had paid rent for the month of June, 2009, and had paid \$320.00

towards September's rent. The Tenant's agent testified that monthly rent was only \$640.00, and not \$660.00 as alleged by the Landlord's agent. The Tenant's agent testified that the Tenant had not paid any rent for the months of October and November, 2009.

### Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenants' door on November 2, 2009. Pursuant to Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on November 15, 2009. The Landlord is entitled to an Order of Possession and I make that Order.

Neither party was certain of the amount the Tenant paid the Landlord for a security deposit. Therefore, the Landlord's application against the security deposit is dismissed. The security deposit remains available on application by either party, to be administered in accordance with the provisions of Section 38 of the Act.

The Landlord's agent was not able to prove loss of rent in the amount of \$130.00 from a period prior to March, 2009. The Landlord's agent did not have sufficient knowledge or evidence to prove that the rent was \$660.00 a month. The Tenant's agent agreed that the Tenant owed a total of \$2,240.00 in unpaid rent (including \$320.00 for September and \$640.00 for October, November and December). Based on the testimony of both parties, the Landlord's agent has established a monetary claim for unpaid rent and loss of rent as follows:

Month	Amount paid	Amount owing
Rent for September, 2009	\$ 320.00	\$320.00

Rent for October, 2009	\$ .00	\$640.00
Rent for November, 2009	\$ .00	\$640.00
Loss of rent for December, 2009	\$ .00	\$640.00
Total balance outstanding		\$2,240.00

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

### Conclusion

I hereby grant the Landlord an Order of Possession effective **two days from service on 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 \$2,290.00 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.

Any security deposit that may have been paid by the Tenant, together with accrued interest, remains available for application by either party, to be administered in accordance with Section 38 of the Act.

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: December 8, 2009