

## Decision

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

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to apply the security deposit towards her 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 Landlord gave affirmed evidence and this matter proceeded on its merits.

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

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order, and if so, in what amount?
- (3) Is the Landlord entitled to recover the filing fee from the Tenant?
- (4) Is the Landlord entitled to keep all or part of the security deposit?

### **Background and Evidence**

#### Landlord's testimony

The Landlord testified that she personally served the Tenant with the Notice to End Tenancy at the rental unit on October 20, 2009 at 11:00 a.m. The Landlord provided a Proof of Service document in evidence, which was signed by the Landlord and a witness.



The Landlord testified that she personally served the Tenant with the Application for Dispute Resolution and hearing package at the rental unit on November 13, 2009, in the mid-morning.

The Landlord testified that:

- The tenancy started earlier this year. There is a written tenancy agreement. The monthly rent is \$1,450.00, due on the first day of the month. The Tenant paid a security deposit to the Landlord in the amount of \$725.00.
- The Tenant remains in the rental unit.
- The Tenant's cheque for September's rent was returned to the Landlord as forged. A copy of the cancelled cheque was provided in evidence, along with a memo from the Bank indicating that the cheque was forged.
- The Tenant's cheque for October, 2009, was returned to the Landlord, insufficient funds. A copy of the NSF cheque was provided in evidence.
- A cheque provided for August's rent was also deemed to be a forgery by the Landlord's bank. The Landlord provided a copy of a letter from the bank stating that they were holding an outstanding debt of \$1,328.74 because of the forged cheque. The Landlord is applying for \$1,328.74 to recover the cost from the Tenant.
- The Tenant has not paid rent for the months of November or December, 2009.
- The Landlord asked for an Order of Possession and to recover the filing fee for the cost of the application from the Tenant.

### **Analysis**

I accept the Landlord's testimony and documentary evidence that the Tenant was duly served with the Notice to End Tenancy. The Tenant did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 47(5) of the Act, the Tenant is conclusively presumed to



have accepted that the tenancy ended on the effective date of the Notice. In this case, the effective end to the tenancy was October 30, 2009.

Therefore, the Landlord is entitled to an immediate Order of Possession and I make that order.

I accept the Landlord's testimony that she personally served the Tenant with the Notice of Hearing Package and Application for Dispute Resolution, on November 13, 2009. In spite of being served with the document, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

Based on the undisputed testimony of the Landlord, and the absence of any evidence to the contrary from the Tenant, the Landlord has established her claim, as follows:

Rent for September, 2009	\$1,450.00
Rent for October, 2009	\$1,450.00
Loss of rent for November, 2009	\$1,450.00
Loss of rent for December, 2009	<u>\$1,450.00</u>
TOTAL:	\$5,800.00

Pursuant to the provisions of Section 72 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.

With respect to the Landlord's claim for recovery of \$1,323.74, the Bank's letter is dated October 29, 2009, and it is not clear whether the overdraft is as a result of the forged cheque for September's rent, or if it is as a result of an additional forged cheque for August's rent. This portion of the Landlord's claim is therefore dismissed with leave to re-apply.

The Landlord has been largely successful in her application and is entitled to recover the filing fee in the amount of \$100.00 from the Tenant.



The Landlord has established a monetary order, as follows:

Rent arrears and loss of rent	\$5,800.00
Recovery of the filing fee	\$100.00
Less security deposit	<u>&lt;\$725.00&gt;</u>
TOTAL amount due to Landlord after set off	\$5,175.00
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### **Conclusion**

The Landlord's application for recovery of \$1,323.74 is dismissed with leave to re-apply.

Under Section 55 of the Act, I grant the Landlord an Order of Possession **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.

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$5,175.00 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.

December 16, 2009

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Date of Decision

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