

## **DECISION**

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

### **Introduction**

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession, a monetary order for unpaid rent, an order to permit the landlord to retain the security deposit in partial satisfaction of the claim, and recover the filing fee for the cost of this application.

The landlord attended the hearing and testified. The tenant did not attend the hearing.

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

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord's application to retain the security deposit in partial satisfaction of the claim justified?

### **Background and Evidence**

The landlord testified that she served the tenant personally with a 10 Day Notice for Unpaid Rent or Utilities, but was not able to provide a date of such service. The landlord also testified that she served the tenant personally with the application for dispute resolution and the notice of hearing documents, but was not able to provide a date for that service.

When asked about the tenancy, the landlord was not able to provide a date that the tenancy started, other than to say that she believed it to be in August, 2009. She was not able to provide evidence of the date the tenancy ended.

The landlord testified that this was a month-to-month tenancy and monthly rent in the amount of \$750.00 was payable in advance on the 1<sup>st</sup> day of each month, and that the

tenant paid a security deposit in the amount of \$375.00, but was not able to provide a date of that payment other than to say that she believed it was in August, 2009.

The landlord further testified that the tenant owes rent in the amount of \$250.00 for October, 2009 and that the tenant paid no rent for November, 2009, December, 2009, January, 2010 or February, 2010. She further testified that the tenant borrowed \$700.00 from the landlord and also owes the landlord \$150.00 for taking some items to the dump. I have no jurisdiction to deal with money borrowed or fees charged for taking items to the dump.

The landlord testified that she does not know where the tenant currently resides and has not received a forwarding address in writing from the tenant.

### **Analysis**

The landlord has the burden of proving the claim against the tenant. The landlord also has the burden of proving how and when documents were served in order for a Dispute Resolution Officer to be satisfied that the *Residential Tenancy Act* has been complied with. I cannot conclusively find that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and that the landlord waited the required 5 days to apply for dispute resolution. Nor can I find that the landlord served the Landlord's Application for Dispute Resolution within the 3 days allowed under the *Act*.

Firstly, the landlord must keep records of payments made, the dates those payments are made, dates that documents are served, and must keep loans separate from rent.

The landlord is permitted under the *Act* to retain the security deposit until a forwarding address is provided in writing by the tenant. Then the landlord has 15 days to return the security deposit in full to the tenant or apply for dispute resolution for an order to retain it. The tenant has 1 year to provide the forwarding address.

I am providing the landlord with a booklet entitled "A Guide for Landlords and Tenants in British Columbia" to assist with future tenancies.

**Conclusion**

The landlord's application is dismissed with leave to reapply.

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: March 19, 2010.

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Dispute Resolution Officer