

## **DECISION**

**Dispute Codes:** OP, MN, MNSD, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55;
3. An Order to be allowed to retain the security deposit; and
4. An Order to recover the filing fee pursuant to Section 72.

I accept that the tenant was properly served with the Notice to End Tenancy and the Application for Dispute Resolution hearing package by way of personal service.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

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

Whether the landlord has cause to end this tenancy and receive an Order of Possession, whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee.

## **Background and Findings**

### ***Rental Arrears***

The tenant says he has paid all except March's rent. The landlords says the tenant has made partial payments on rental arrears but has not paid all of his rent on time since the start of the tenancy. The landlords say the tenant paid only \$250.00 towards his January rent leaving rent leaving \$430.00 owing and he has not yet paid February or March rent. The tenant says he has been out of work and had an arrangement with the landlords to make partial payments. The landlords deny any special arrangement. The tenant says the landlord does not give receipts for the rental payments he pays in cash. The landlord says he would provide receipts but does not because the tenant does not pay the rent.

The tenant says he has paid all except March's rent, then the tenant said he had an arrangement to make partial rental payments due to his job loss. The tenant agrees that he has not paid March's rent, but says this is because he was awaiting the outcome of this hearing. The landlord says only \$250.00 has been paid for all of January, February and March. Based on the tenants contradictory testimony that he (a) paid all of his rent and then (b) had an agreement to make partial payments I prefer the evidence of the landlord and find that there is outstanding rent.

As I have found that there is outstanding rent I find that the landlord is entitled to an Order for Possession. The landlord issued a 10 day Notice to End Tenancy and the tenant(s) has/have not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant(s) has/have been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Next I must determine how much rent remains outstanding. The landlord agrees that the tenant paid at least \$250.00 toward his January rent, yet no receipt for that payment has been entered into evidence by either party. The tenant says this is because the

landlord does not give receipts. The landlord says he would issue receipts if the tenant paid his rent. However, even though the landlord agrees at least \$250.00 has been paid, no receipt or copy of a receipt for that payment has been supplied in evidence. Based on this I find that it is likely that this is because the landlord does not issue receipts for the cash rental payments he receives.

When a landlord does not supply receipts for cash payments, landlords leave tenants unable to prove their rental payments. Further, without the landlord's copy of those receipts or some other accounting of payments the landlord leaves him/herself unable to prove what is paid and what is not. As the landlord brought this application, the landlord has brought this application seeking rental arrears he bears the burden of proving this claim. In this I find that the landlord has failed in his burden of proving the arrears he now demands. I will rely on the only arrears that both parties agree upon and that is the arrears for March of \$680.00.

### ***Security Deposit***

I will allow the landlord to retain the Security deposit of \$340.00 paid March 1, 2009 in partial satisfaction of this claim.

### ***Filing Fees***

As the landlord has been mostly successful in this claim I find that the landlord is entitled to recover the filing fees paid for this application.

### ***Calculation of total Monetary Award***

Rental Arrears	680.00
Filing Fees for the cost of this application	50.00
Less Security Deposit	-340.00
Total Monetary Award	390.00

## **Conclusion**

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.