

## **Decision**

### **Dispute Codes:**

OPR; MNR; MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent, to retain the security deposit in partial satisfaction of its monetary claim; 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's agents 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?

### **Background and Evidence**

The Landlord's agents gave the following testimony and evidence:

This tenancy began on September 1, 2009. A copy of the tenancy agreement was entered in evidence. Monthly rent is \$895.00 per month, due the first day of each month. Parking fees are \$15.00 per month. The Tenant paid a security deposit in the amount of \$447.50 on September 1, 2010.

On February 8, 2010, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit.

On February 24, 2010, the Landlord's agent mailed the Notice of Hearing documents, by registered mail, to the Tenant's residential address. The Landlord's agent provided the tracking number for the registered mail. The Landlord's agent testified that the Tenant did not pick up the documents, and they were returned to the Landlord. The Landlord's agent personally served the Tenant with the Notice of Hearing documents at 4:30 p.m. on March 25, 2010, at the Tenant's residence.

The Landlord's agent provided a printout of the Tenant's rent ledger, dated February 18, 2010. As at February 18, 2010, the Tenant owed \$1,835.00 in rent and parking fees. The Landlord's agent stated that no further payments have been made, and the Tenant remains in the rental unit. The Landlord is applying for loss of rent and parking fees for the months of March and April, for a total monetary claim calculated as follows:

Balance owing February 18, 2010	\$1,835.00
Rent and parking fees for March, 2010	\$910.00
Rent and parking fees for April, 2010	<u>\$910.00</u>
TOTAL	\$3,655.00

### **Analysis**

I accept the Landlord's agent's testimony that the Notice of Hearing documents were mailed, by registered mail, to the Tenant on February 24, 2010. Service in this manner is deemed to be effected 5 days after mailing the document to the Tenant's address, regardless of whether or not the Tenant chooses to accept delivery of the registered mail. The Landlord's agent also personally served the Tenant with the Notice of Hearing documents on March 25, 2010, after the post office returned the registered mail documents. I find that the Tenant was duly served with the Notice of Hearing documents. Despite being served, the Tenant did not sign into the teleconference, and this matter proceeded in his absence.

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on February 8, 2010. Pursuant to the provisions of

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 February 21, 2010. The Landlord is entitled to an Order of Possession and I make that Order.

The Landlord's agents have established a monetary claim for unpaid rent; loss of rent for the months of March, and April, 2010; and parking fees for March and April, 2010 in the total amount of \$3,655.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

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

The Landlord has established a monetary claim as follows:

Un paid rent, loss of rent and parking fees	\$3,655.00
Recovery of the filing fee	\$50.00
Subtotal	\$3,705.00
Less security deposit	- \$447.50
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$3,257.50</b>

### **Conclusion**

I hereby grant the Landlord an Order of Possession **effective 2 days after 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 \$3,257.50 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.

Dated: April 12, 2010