

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation under the Act, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was given in person to the tenant on February 20, 2010. The landlords' agent who served the hearing package to the tenant gave sworn testimony that service took place as stated.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

### 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 entitled to a Monetary Order for money owed or compensation for loss or damage?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

This tenancy started on July 01, 2008. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. The rent for this unit is \$995.00 per month and is due on the first of each month. The tenant paid a security deposit of \$497.50 on June 23, 2008.

The landlords' agent testifies that the tenant owed a balance of rent for February of \$536.42. A 10 Day Notice to End Tenancy was posted on the tenants' door on February 02, 2010 at 7.00 p.m. and the Landlord has provided a signed proof of service that this took place as stated. The tenant did not pay rent for March, 2010 on the day it was due.

The landlords' agent states that since filing their application the tenant has paid some of the outstanding rent for February, March and April 2010. On March 19, 2010 the tenant paid two sums one of \$611.42 and one of \$968.58. On April 01, 2010 the tenant paid \$948.58. The landlord states that the tenant now owes rent of \$21.42 for March, 2010 and \$46.42 for April, 2010.

The landlord states that the tenancy agreement has a separate clause that states the landlord will charge the tenant \$20.00 for late fees for each month rent is late. The landlord has applied a \$20.00 charge in late fees for each month the rent has been late.

The landlord requests to keep part of the tenants' security deposit in satisfaction of the outstanding rent and seeks to recover the \$50.00 filing fee paid for this application.

The landlord states that the tenant has told them she will be moving from the rental unit at the end of April, however the landlord requests an Order of Possession in the event this does not occur.

### Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I refer both Parties to section 26 of the Act which states: a tenant must pay rent on the day it is due under the tenancy agreement.

I have reviewed the rent ledger provided by the landlord and find the landlord has miscalculated the amount owed to them by the tenant. I have recalculated this as follows On January 01, 2010 the tenant owed \$1,465.00. A late fee was applied to Januarys rent of \$20.00 taking the total amount owed to \$1,485.00. On January 04, 2010 the tenant paid \$995.00 and on January 22, 2010 the tenant paid \$968.58. This left the tenant a credit of \$478.58. On February 01 rent was due of \$995. As the tenant held a credit for Februarys rent she now owed the amount of \$516.42. The landlord applied a late fee of \$20.00 which took the balance owed to \$536.42. On March 01, 2010 the tenant owed a balance of \$1531.42 which includes rent for March and the balance owed for February, 2010. A late fee was added for March which takes the balance owed to \$1551.42. On March 19 the tenant paid two amounts totaling \$1,580.00. This left the tenant a credit of \$28.58. On April 01, 2010 the tenants rent was due of \$995.00. The tenant had a credit of \$28.58 so that left a balance owed by the tenant for Aprils rent to be \$966.42. On April 01, 2010 the tenant paid 948.58. This left an outstanding balance of rent owed for April, 2010 of 17.84. The landlord applied a \$20.00 late fee for April taking the amount owed to \$37.84.

I therefore find the tenant owes a balance of rent and late fees of **\$37.84** not \$87.84 as calculated by the landlord.

I find that there is no dispute of the fact that the tenant owed arrears for February, 2010 when the 10 Day Notice was issued. Payment of all the outstanding rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid within five days but was paid in full by March 19, 2010. Therefore the Ten-Day Notice still remained in effect. I find that the Notice for unpaid rent was supported under the *Act* and section 46 of the *Act* was fully met. Based on the testimony and evidence of the landlord, I find that the landlord is entitled to an Order of Possession.

As the landlord has been largely successful I find they are entitled to recover the \$50.00 filing fee from the tenant pursuant to section 72(1) of the *Act*. I find the landlord is entitled to a monetary award of **\$87.84** which includes the outstanding rent of \$37.84 and the \$50.00 filing fee.

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. I order that the landlord retain the amount of **\$87.84** from the security deposit of \$497.50 and accrued interest of \$3.91 leaving a balance \$413.57 which must be returned to the tenant at the end of the tenancy or otherwise dealt with in compliance with section 38 of the *Act*.

An Order of Possession has been issued to the landlord. A copy of the Order must be served on the tenant and the tenant must vacate the rental unit on **April 30, 2010**. The Order of Possession may be enforced in the Supreme Court of British Columbia.

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 09, 2010.

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Dispute Resolution Officer