

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was scheduled to deal with the landlord's request for an Order of Possession and Monetary Order for unpaid rent and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of the hearing and served with the landlord's evidence by registered mail sent April 1, 2010 to the rental unit. The landlord testified the tenant is still residing in the rental unit and provided a tracking number as evidence of the registered mail. The registered mail was returned to the landlord as unclaimed. I was satisfied the landlord sufficiently served the tenant in a manner that complies with the Act and I proceeded to hear from the landlord without the tenant present.

The landlord requested the application be amended to include retention of the security deposit and pet deposit in partial satisfaction of the rent owed and to recover unpaid and loss of rent for the months of April and May 2010. I accepted the landlord's request for amendments to the application and have considered them in making this decision.

### Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord entitled to a Monetary Order for loss of rent, utilities and late fees?
4. Is the landlord authorized to retain the tenant's security deposit and pet deposit in partial satisfaction of the amounts owed the landlord?

### Background and Evidence

The landlord provided evidence as follows. The tenancy commenced August 1, 2009 for a one year fixed term. The tenant paid a \$800.00 security deposit and an \$800.00

pet deposit. The tenant was required to pay the monthly rent of \$1,600.00 in two instalments of \$800.00 due on the 15<sup>th</sup> and 30<sup>th</sup> of each month. On March 22, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates the tenancy will end April 4, 2010 and that rent of \$4,560.00 was outstanding as of March 15, 2010. The tenant made a \$1,000.00 payment on March 19, 2010 not reflected in the balance stated on the Notice.

The tenancy agreement provided as evidence includes two provisions related to late payment of rent. Clause 10 provides that the tenant must pay a late fee of \$25.00 where rent is paid late. Clause 44 was added as an additional term and provides that the tenant must pay a late fee of \$50.00.

The landlord is seeking recovery of \$252.28 the landlord paid for water bills. The rent does not include water supply as per the tenancy agreement. The landlord provided documentary evidence of the water bills paid by the landlord or added to the landlord's property tax bill.

The landlord provided a ledger of the rent due and payments made since December 31, 2009 up to March 31, 2010. The ledger shows unpaid rent of \$4,460.00 up to March 31, 2010 and \$250.00 for late fees for January – March 2010 at a rate of \$50.00 per occurrence. Upon enquiry, the landlord testified that the December 31, 2009 balance forward includes \$100.00 of late fees in excess of \$25.00 per occurrence.

### Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date.

In this case, the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice and I find the tenancy ended on April 4, 2010. Since the tenant continues to reside in the rental unit, the landlord is entitled to an Order of Possession. I provide an Order of Possession for the landlord with this decision effective two days after service upon the tenant. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

I am satisfied that the tenant failed to pay rent when due under the tenancy agreement; however, I find the late payment term in clause 44 of the tenancy agreement non-compliant with the Residential Tenancy Regulation and unenforceable. I find the late payment term in clause 10 does comply with the Residential Tenancy Regulation and enforceable. Therefore, I reduce the landlord's claim for late fees for January through March 2010 by one-half and I reduce the balance forward as of December 31, 2009 by \$100.00 to reflect the overcharge of late fees.

Upon review of the tenancy agreement and other evidence, I am satisfied the landlord has incurred a loss with respect to paying \$252.28 in water bills that should have been paid by the tenant.

Since the tenancy ended April 4, 2010 I further find the tenant was obligated to pay rent for April 2010 and I grant the landlord's request to recover unpaid rent for April 2010. Since the tenant has continued to reside in the rental unit in May 2010 I further award the landlord loss of rent for May 2010.

I grant the landlord's request to retain the tenant's security deposit and pet deposit in partial satisfaction of the rent owed to the landlord. As the landlord was successful with

this application, I also the landlord's request to recover the filing fee paid for this application from the tenant.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent up to March 31, 2010 per ledger	\$ 4,460.00
Less: excessive late fees included in December 2009 balance	(100.00)
Plus: one-half of late fees January – March 2010	125.00
Plus: water bills paid by landlord	252.28
Plus: unpaid rent April 2010	1,600.00
Plus: loss of rent May 2010	1,600.00
Plus: filing fee	50.00
Less: retention of security and pet deposits	<u>(1,600.00)</u>
Monetary Order for landlord	\$ 6,387.28

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been authorized to retain the tenant's security deposit and pet deposit in partial satisfaction of the rent owed the landlord and has been provided a Monetary Order for the balance of \$6,387.28 to serve upon the tenant.

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: May 18, 2010.

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Dispute Resolution Officer