

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of this hearing and the landlord's evidence by registered mail sent to the rental unit March 20, 2010. The landlord provided a registered mail receipt as evidence of service and confirmed that the tenant was residing in the rental unit at the time of mailing. Having been satisfied of service of the hearing documents, I proceeded to hear from the landlord without the tenant present.

### Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to unpaid rent and loss of rent and other fees payable under the terms of the tenancy agreement?
3. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The landlord provided evidence as follows. The tenancy commenced June 15, 2009 and the tenant is required to pay rent of \$750.00 on the 1<sup>st</sup> day of every month. The tenant paid a \$375.00 security deposit on May 30, 2009. In addition to rent, the tenant must pay \$10.00 per month for parking and if the tenant is late paying rent the tenant must pay a late fee of \$20.00. The tenant failed to pay \$460.00 on March 1, 2010 and a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) was posted on the tenant's door on March 2, 2010 in the presence of a witness. The 10 Day Notice has an effective date of March 13, 2010 and indicates that \$480.00 was outstanding. The landlord explained the \$480.00 includes the late fee of \$20.00. The landlord testified that the tenant paid \$480.00 on March 18, 2010 and was issued a receipt for use and occupancy only. The tenant continues to reside in the rental unit as of today's date and has not paid for use and occupancy for April or May 2010.

The landlord reduced the amount claimed to reflect the payment made in March 2010 and is seeking to recover loss of rent for April and May 2010, parking of \$20.00 for April and May 2010 and late fees for April and May 2010.

As evidence for this hearing, the landlord provided a copy of the tenancy agreement, the 10 Day Notice, Proof of Service of the 10 Day Notice, and the registered mail receipt.

### Analysis

Section 46 of the Act provides that where a tenant receives a 10 Day Notice to End Tenancy, the tenant must dispute the Notice or pay the outstanding rent within five days of receiving the Notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and the tenant will have to vacate the rental unit by that date.

I am satisfied that a 10 Day Notice was posted on the tenant's door on March 2, 2010 and the tenant is deemed to have received the Notice three days later under section 90 of the Act. Accordingly, the effective date on the Notice is automatically changed to read March 15, 2010 to comply with the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice by March 10, 2010, I am satisfied that the tenancy ended on March 15, 2010. Since the landlord accepted payment of rent owed after the effective date of the Notice but indicated its acceptance was for use and occupancy only, I am satisfied that the landlord did not reinstate the tenancy.

In light of the above, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession may also be enforced in The Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover loss of rent for April and May 2010 but I do not award late fees for these months since the tenancy and the terms of the tenancy agreement ended March 15, 2010. I do not find sufficient documentary evidence to establish the landlord's entitlement to parking fees and I do not award parking to the landlord.

As the landlord was largely successful with this application, I award the filing fee to the landlord. I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts owed the landlord. I provide for the landlord with this decision a Monetary Order calculated as follows:

Loss of rent – April and May 2010	\$ 1,500.00
Filing fee	50.00
Less: security deposit and accrued interest	<u>(375.00)</u>
Monetary Order	<u>\$ 1,175.00</u>

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 tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has established an entitlement to recover loss of rent from the tenant for the months of April and May 2010. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$1,175.00 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 04, 2010.

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Dispute Resolution Officer