

## Decision

**Dispute Codes:** OPR, MNR, FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

I reviewed the documentary evidence provided by the Landlord prior to the Hearing. The Tenants did not provide any documentary evidence. The parties gave affirmed evidence and this matter proceeded on its merits.

### **Issue(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, and if so, in what amount?

### **Background and Evidence**

#### Landlord's testimony

The Landlord testified that the Notice to End Tenancy issued April 15, 2010, was posted to the Tenants' door at the rental unit on April 16, 2010 at 3:50 p.m. The Landlord provided a copy of the Notice to End Tenancy in evidence.

The Landlord's agent testified that she mailed the Notice of Hearing package and copies of the Landlord's evidence, by registered mail, to both of the Tenants at the rental unit on May 4, 2010. The Landlord's agent provided copies of the registered mail receipts and tracking numbers in evidence.

The Landlord's agent testified that the Tenants were still occupying the rental unit. The Landlord's agent stated that the Tenants had paid \$503.00 to the Landlord towards April's rent and that the Landlord's agent provided the Tenants with a receipt marked "for use and occupancy only. The Landlord's agent testified that the Tenants paid an additional \$503.00 to the Landlord on June 1, 2010, and the Landlord's agent provided another receipt, again for "use and occupancy only". The Landlord's agent stated that, other than those two payments, the Tenants have not paid any money to the Landlord towards April, May or June's rent. The Landlord is seeking a monetary order as follows:

Date	Rent due	Amount paid	Balance Owing
March 1, 2010	\$859.00	\$503.00	\$356.00
April 1, 2010	\$859.00	\$503.00	\$712.00
April 29, 2010		\$503.00	\$209.00
May 1, 2010	\$859.00		\$1,068.00
June 1, 2010	\$859.00	\$503.00	\$1,424.00

#### Tenant's testimony

The Tenant stated that he had moved out of the rental unit and therefore he didn't understand why the rent was so much. The Tenant testified that the Tenants did not know that they had to apply for subsidy in order to receive it, and that he did not know how to apply. The Tenant stated that they had not been supplied with an application to fill out.

#### Landlord's testimony

The Landlord's testified that the number of occupants in the rental unit did not affect the housing charge and that subsidy was calculated based on the household's income.

The Landlord's agent provided copies of letters provided to the Tenants on February 18, 2010; March 22, 2010; and March 23, 2010, into evidence. On February 18, 2010, the Landlord notified the Tenants that the annual review for rent subsidy had been completed and that the Tenants had not provided the requested information in order to qualify for subsidy. Therefore, the Tenants were required to pay market rent in the amount of \$859.00 effective March 1, 2010. The letter dated March 22, 2010, indicated that the Tenants did not qualify for subsidy, but advised that the Tenants could re-apply and be placed on a waitlist. The letter dated March 23, 2009, requested additional information from the Tenants before their application could be processed.

### **Analysis**

I accept the Landlord's agent's testimony that the Notice to End Tenancy issued April 15, 2010, was posted to the Tenants' door on April 16, 2010. Service in this manner is deemed to be effected 3 days after posting the document. The Tenants did not pay the outstanding rent, or file for dispute resolution, within 5 days of being deemed served with the Notice. Therefore, pursuant to the provisions of Section 46(5) of the Residential Tenancy Act (the "Act"), the Tenants are presumed to have accepted that the tenancy ended on the effective date of the Notice. The effective date of the Notice was April 29, 2010. Therefore, the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

The Landlord's agent asked for an Order of Possession **effective June 30, 2010**, in order to allow the Tenants more time to find alternate accommodation.

The Landlord is exempt from the provisions of Sections 41 to 43 (regarding rent increases) of the Residential Tenancy Act (the "Act") pursuant to the provisions of Section 2 of the Residential Tenancy Regulation.

Paragraph 6 of the tenancy agreement states:

The Tenant shall provide the Landlord the Tenant's income verification a minimum of once a year upon request of the Landlord.

Based on the testimony provided by both parties, and the documentary evidence provided by the Landlord, I find that the Landlord has established its claim for unpaid rent in the amount of \$1,424.00.

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

The Landlord did not apply against the security deposit, and therefore the security deposit together with accrued interest is available on application by either party, to be administered in accordance with the provisions of Section 38 of the Act.

### **Conclusion**

I grant the Landlord an Order of Possession **effective 1:00 p.m., June 30, 2010**. This Order must be served on the Tenants 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 \$1,474.00 against the Tenants. This Order must be served on the Tenants 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.

June 21, 2010

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Date of Decision

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