

## **Decision**

**Dispute Codes:** OPR, MNR, MNSD, MNDC and FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession pursuant to section 55.
2. A monetary order for unpaid rent pursuant to section 67.
3. An order to be allowed to keep all or part of the security deposit pursuant to section 38.
4. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

The tenant did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the notice) on the tenant's door on May 3, 2010. One of his witnesses gave sworn testimony that he saw the landlord post this notice on the tenant's door. The landlord gave sworn testimony that the tenant was served with the Application for Dispute Resolution hearing package (the hearing package) by registered mail on May 15, 2010. The landlord provided a Canada Post tracking number to confirm the service of the hearing package by registered mail. I accept that the tenant was duly served with the notice and the hearing package.

The landlord testified that the tenant moved out of the rental premises on May 13, 2010 after receiving the notice. However, the landlord said that the tenant has kept some of his personal possessions in storage on the property and has not surrendered the keys to the rental premises.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

**Issue(s) to be Decided**

Whether the landlord is entitled to an Order of Possession. Whether the landlord is entitled to a monetary order for unpaid rent, retention of the security deposit and recovery of the filing fee for this application.

**Background and Evidence**

The landlord gave evidence that he entered into a fixed term tenancy agreement with the tenant and a co-tenant on October 1, 2008. Rent on a one year lease was established at \$2,500.00 per month, payable in bi-weekly instalments on the first and fifteenth of each month. On September 16, 2008, the two co-tenants paid a security deposit of \$1,250.00. The landlord testified that he continued to hold this security deposit.

The landlord testified that the tenant entered into a new fixed term tenancy agreement on October 1, 2009. Rent and terms of this six-month tenancy agreement were established on the same basis as the previous agreement with the then co-tenants.

The landlord gave sworn evidence regarding unpaid rent during 2009 and 2010. He submitted evidence to support his May 12, 2010 application for a monetary order of \$18, 717.00.

The landlord provided evidence that he has entered into a new tenancy agreement with another individual who would like to move into these premises, but cannot do so until the tenant provides him with vacant and clear possession of these premises. Since he submitted his May 12, 2010 application, the tenant has not vacated the entire premises. The landlord provided an updated invoice which included a request for \$2,500.00 in rent for June 2010. The landlord testified that he has not received any rent from the tenant from November 1, 2009. He received rent of \$2,100.00 for October 2009.

The landlord testified that the tenant and then co-tenant provided two N.S.F. cheques for the April 2009 rent payment. The landlord provided evidence that he was charged two \$5.00 fees by his bank for these cheques. To resolve the rental arrears of April 2009, the landlord accepted a \$500.00 payment from the then co-tenants and a \$2,000.00 promissory note from the then co-tenants. He filed a copy of this May 21, 2009 promissory note into evidence. This promissory note committed the borrowers (i.e., the tenant and then co-tenant) to repay the \$2,000.00 owing from April 2009 in four equal monthly instalments over the following four months. Interest was payable to the landlord, as the lender. The promissory note included a provision whereby the lending landlord had a right of repossession of the "security" if the borrowers defaulted on their payment schedule. The landlord testified that \$1,600.00 of this \$2,000.00 promissory note remains owing. He requested a monetary award to recover this amount from the tenant.

After he filed his May 12, 2010 application, the landlord submitted an invoice to the tenant requesting an additional \$525.99 in fees and costs. These costs included \$217.00 in interest on the promissory note from May 2009 until June 2010, the \$100.00 filing fee for this application, and assorted other costs associated with his pursuit of this application.

The landlord recognized that he may be able to obtain some rent from these premises for June 2010, as he has a new tenant who would like to move in as soon as possible. He testified that he would be satisfied with a monetary order that would include one-half of the rent owing for June 2010. My monetary order reflects this alteration in his request for unpaid rent for June 2010.

## **Analysis**

### **Order of Possession**

I issue the landlord an Order of Possession as attached.

### **Monetary Order for Rental Arrears**

I find that the landlord is entitled to a monetary order for the following amount of unpaid rent and late fees charged to him by his bank.

<b>Rental Arrears &amp; NSF Charges</b>	<b>Amount Owning</b>
NSF Charges	\$10.00
October 2009	400.00
November 2009	2,500.00
December 2009	2,500.00
January 2010	2,500.00
February 2010	2,500.00
March 2010	2,500.00
April 2010	2,500.00
May 2010	2,500.00
June 1-15, 2010	1,250.00
<b>Total Monetary Award</b>	<b>\$19,160.00</b>

I deny the landlord's request to include in this monetary order an unpaid amount of \$1,600.00 from the promissory note and the \$217.00 in interest owing on that promissory note. I do so for the following reasons:

- The promissory note applies to the previous tenancy, which includes the tenant as well as the former co-tenant.
- The promissory note is a separate contractual agreement between the landlord and the two individuals noted as the borrowers in that agreement. My mandate under the *Residential Tenancy Act* does not extend to the enforcement of the terms of the promissory note.

Section 72 of the *Act* addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute.

Such costs include, but are not limited to, time spent preparing for a hearing, or materials and supplies purchased in association with making an application for dispute resolution. Other than his filing costs, I deny the landlord's request to recover the costs of pursuing dispute resolution from the tenant.

### **Security Deposit**

The landlord testified that he continued to hold a security deposit of \$1,250.00 plus interest paid on September 16, 2008. I allow the landlord to retain this security deposit in partial satisfaction of the monetary award.

### **Filing Fee**

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### **Conclusion**

I issue an Order of Possession to the landlord. I make a monetary order in favour of the landlord as follows:

<b>Item</b>	<b>Amount Owing</b>
Total Monetary Award	\$19,160.00
Recovery of Filing Fee for this application	100.00
Retention of Security Deposit plus interest (\$1,250.00 plus \$5.48)	-1,255.48
<b>Total Monetary Award</b>	<b>\$18,004.52</b>

Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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*.