

## **DECISION**

### **Dispute Codes:**

**OP, MNR, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral testimony and to make submissions during the hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for breach of an agreement under the Act?

Is the landlord entitled to a monetary Order for loss of revenue and rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

This was a fixed term tenancy that commenced on December 8, 2008; ending December 31, 2009. The written agreement required the tenant to move out at the end of the fixed term.

A deposit in the sum of \$212.50 was paid on December 8, 2008; rent was \$425.00 per month due by the first day of the month.

On November 4, 2009 the landlord gave the tenant written notice that the tenancy was ending and he would need to move out by December 31, 2009. The tenant did not move out and since December 2009 has been provided receipts for use and occupancy only.

The tenant received a government cheque for June rent; however it was applied against rent owed for May, resulting in arrears for June rent in the sum of \$425.00.

The tenant stated he gave the building manager, Dan, a cheque in March. This third party cheque was refused. The tenant then obtained a money order and paid Dan with the order. The landlord has no record of this money order and the tenant did not provide a copy of the receipt, as evidence of the money order.

The tenant explained that he and Dan have not had a good relationship. The money order given to Dan did not have a recipient name notated as the tenant thought Dan would use a stamp with the landlord's name. Dan was not available to testify for the landlord as it was his day off.

The landlord is claiming loss of revenue for June rent in the sum of \$425.00; the balance of the amount claimed by the landlord has been paid by the tenant.

The tenant agreed that he will move out and the parties mutually agreed the tenant will vacate the rental unit by June 30, 2010, at 5 p.m. Based on this mutual agreement an Order of possession will be issued to the landlord.

### Analysis

When making a claim under the Act the party making the claim has the burden of proving their claim. In the absence of the landlord's employee, who the tenant states was paid March rent via a money order, I am unable to find that the landlord did not receive the rent owed, which has resulted in the claim for one month's rent arrears. In the absence of the landlord's employee to provide testimony in relation to the money order payment and based on the disputed testimony of the tenant and landlord, I find, based on the balance of probabilities, that the claim for one month's unpaid rent is dismissed.

The parties have reached a mutual agreement to end this tenancy based upon the fixed-term tenancy agreement. I have issued an Order of possession effective June 30, 2010, at 5 p.m.

The landlord's current claim against the deposit is dismissed and the landlord will continue to hold the deposit in trust. The deposit must be disbursed at the end of the tenancy as provided by the Act.

As the monetary claim is dismissed and the parties reached a mutual agreement ending the tenancy I decline return of the filing fees to the landlord.

### Conclusion

The landlord has been granted an Order of possession, based on a mutual agreement that is effective **June 30, 2010, at 5 p.m.** This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The monetary claim for unpaid rent is dismissed.

The landlord will continue to hold the deposit in trust, to be disbursed as required by the Act.

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: June 11, 2010.

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Dispute Resolution Officer