

## **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 presented 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 affirmed testimony and to make submissions during the hearing.

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

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

This tenancy commenced on October 1, 1998. The tenant paid a deposit in the sum of \$305.00 on that date. Rent is currently \$655.00 per month, due on the first day of the month. Each month the tenant's son currently has a government cheque in the sum of \$350.00 that is directly deposited to the landlord's account and the balance owed is paid by the tenant. Effective July 1, 2009 rent increased from \$640.00 to \$655.00 per month.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of April 15, 2010, was served to the tenant on April 2, 2010. Initially the caretaker testified that she handed the tenant this Notice. The tenant testified that the caretaker had given her 2 separate Notices, both of which had been slid under the tenant's door. The caretaker then testified that the tenant was correct, that the Notice had been slid under the door and that it was the notice of this hearing that had been personally served to the tenant.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$2,820.00 within five days of service. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant and landlord agreed that a 10 day Notice was given to the tenant in mid-March, 2010, at which time the tenant was asked to put together a repayment plan for the landlord. When the tenant made a rent payment on March 26, she did not provide the landlord with a repayment plan; the landlord then issued the second Notice on April 2, 2010.

During the hearing the tenant confirmed that she had received the 2 Notices approximately 2 months ago, but thought that after making a payment the landlord had told her that she could then ignore the Notices. The landlord agreed that this occurred after the first Notice was issued, but that after the tenant had been given the April 2 Notice she did not make any rent payment until the landlord received the direct deposit of \$350.00 on May 4, 2010. There was no discussion with the tenant in relation to the direct deposits made in May or June and the tenant was not told that this hearing would be cancelled.

The landlord provided a hand-written list of rent owed, payments made and balance owed by the tenant as follows:

Date	Paid	Balance
March 6, 2009	600.00	40.00
April 4, 2009	300.00	380.00
May 6, 2009	630.00	390.00
June 6, 2009	730.00	300.00
July 3, 2009	100.00	855.00
August 4, 2009	400.00	1,110.00
September 5, 2009	40.00	1,725.00
October 6, 2009	600.00	1,780.00
November 2009	0	2,735.00
December 2009	600.00	2,790.00
January 2010	870.00	2,575.00
February 2010	755.00	2,475.00
March 2010	655.00	2,475.00
March 26, 2010	670.00	2,460.00
May 4, 2010	350.00	2,765.00
June 2010	350.00	3,070.00
	8,410.00	

The landlord is claiming compensation in the sum of \$3,070.00 for unpaid rent from March 2009 to June 2010.

The tenant received a copy of the landlord's hand-written accounting of rent payments made and found it confusing, but did not dispute the amount claimed.

### Analysis

The Notice ending tenancy issued on April 2, 2010, was given to the tenant by sliding a copy of the Notice under her door. Section 88 of the Act provides requirements in relation to service of documents. Sliding a document under a door is not a method considered by the Act. However, as the tenant has acknowledged receipt of the Notice, I find, pursuant to section 71(2)(b) that the tenant was sufficiently served with the Notice issued on April 2, 2010, effective three days after it was placed under her door; April 5, 2010.

The tenant did not dispute receipt of the Notice and her submission that the landlord reinstated the tenancy by telling her payments made resulted in cancellation of the Notice is not consistent with the actions of the landlord, who submitted an Application on April 26, 2010, requesting an Order of possession. The tenant had not made any rent payment from the time the Notice was issued on April 2, 2010, and the time the landlord's Application was submitted and the tenant was not told that the direct deposit payments made in May and June had reinstated her tenancy and that this hearing would, as a result, not proceed.

The Notice to End Tenancy required the tenant to vacate the rental unit on April 15, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective **two days after it is served upon the tenant.**

From March 2009 to June 2009 the tenant owed \$2,560.00 in rent and from July 2009 to June 2010 the tenant owed an additional \$7,860.00; totaling \$10,420.00. During this time, according to the landlord's evidence, the tenant paid \$8,410.00. Therefore, I find that the landlord is entitled to compensation for unpaid rent in the sum of \$2,010.00 owed from March 2009 to June, 2010, inclusive. I have determined that the balance owed calculated by the landlord exceeds the amount owed, after payments made are deducted from rent payments owed.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$340.55 in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$2,060.00, which is comprised of \$2,010.00 in unpaid rent from March 2009 to June, 2010, inclusive and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$340.55, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,719.45**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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*.

Dated: June 14, 2010.

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Dispute Resolution Officer