

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, MNDC, FF, O

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order to keep all or part of the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order to cancel the notice to end tenancy.

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

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to an order cancelling the notice to end tenancy?

### **Background and Evidence**

This fixed term tenancy began on May 1, 2009 with an expiry date of April 30, 2010, following which the tenancy continued on a month-to-month basis. Rent in the amount of \$800.00 is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00.

The landlord's agent testified that the tenant failed to pay rent in the months of January and February, 2010. On March 13, 2010 the tenant paid the landlord \$1,000.00 and

promised to pay the balance owing by the end of April, 2010. The tenant paid \$40.00 on April 6 and another \$140.00 on April 13, 2010. On April 28, 2010 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the months of April, May and June, 2010. During the landlord's agent's testimony, it was determined that an error appears in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 28, 2010, in that it states that rent in the amount of \$1,895.00 was due on the 1<sup>st</sup> day of April, 2001, and should read April 1, 2010.

The landlord's agent also testified that the tenancy agreement, a copy of which was provided in advance of the hearing, states that late fees will be assessed in the amount of \$25.00 for overdue rental payments, and the landlord is claiming \$100.00 in late fees.

The landlord's agent further testified that the tenancy agreement states that the tenant is responsible for 40% of the utilities, being electricity and gas, and that the tenant was to pay another tenant in another unit of the building who has the utilities in their name. That amount claimed is \$502.09 but is not owed to the landlord.

The tenant testified that the landlord's agent and the tenant had a discussion wherein they agreed that the tenant would pay all arrears by the end of April, 2010, however, prior to the end of April, the landlord issued the notice to end tenancy, and therefore, the tenant is requesting that the notice to end tenancy be cancelled. When questioned about paying the arrears at the end of April and paying rent for May and June, 2010, the tenant stated that she was waiting for this dispute resolution hearing.

### **Analysis**

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent. I further find that the error contained in the notice has

not prejudiced the tenant, and the form and content of the notice complies with Section 52 of the *Act*.

The tenant's testimony that the landlord had agreed to wait until the end of April to be paid the arrears is certainly clouded by the actions of the tenant in not paying any rent after being served. The *Residential Tenancy Act* states:

**26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have no evidence before me that the tenant had any right under the Act to deduct any portion of the rent.

As for the monetary order, I find that the landlord has established a claim for \$3,620.00 in unpaid rent and \$100.00 in late fees as claimed. The landlord is also entitled to recovery of the \$50.00 filing fee.

With respect to the utilities, I find that the landlord is not owed utilities, and I have no authority beyond residential tenancy disputes.

### **Conclusion**

Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the landlord retain the deposit and interest of \$400.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,370.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application to cancel the notice to end tenancy is hereby dismissed without leave to reapply.

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 21, 2010.

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Dispute Resolution Officer