

## **DECISION**

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

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

I reviewed the documentary evidence provided by the Landlord prior to the Hearing. The Tenant did not provide any documentary evidence. The Landlord 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**

The Landlord testified that the Notice to End Tenancy issued April 15, 2010, was posted to the Tenant's' door at the rental unit on April 15, 2010.

The Landlord testified that he mailed the Notice of Hearing package, by registered mail, to the Tenant at the rental unit on May 4, 2010. The Landlord provided the tracking number for the registered mail document. The Canada Post tracking system indicates that the package was returned unclaimed to the Landlord on June 1, 2010.

The Landlord testified that the Tenant is still occupying the rental unit, although the Tenant told the Landlord on June 18, 2010, that he would be moving out.

The Landlord testified that the tenancy started on August 18, 2009. The Tenant paid a security deposit in the amount of \$400.00 on August 18, 2009. Monthly rent is \$772.00, due on the first day of each month. The Landlord testified that on April 15, 2010, the Tenant owed the Landlord \$1,600.00 in unpaid rent for the months of February, March and April, 2010. The Landlord could not be more specific about the amount owed by the Tenant (i.e. how much the Tenant paid for February, March or April rent, if any).

### **Analysis**

I am satisfied that the Landlord mailed the Tenant the Notice of Hearing documents, by registered mail, to the Tenant's residence, on May 4, 2010. Service in this manner is deemed to be effected 5 days after mailing the document, whether or not the Tenant chooses to accept delivery of the registered mail. Despite being deemed served with the Notice of Hearing documents on May 9, 2010, the Tenant did not sign into the teleconference and this matter proceeded in his absence.

I accept the Landlord's testimony that the Notice to End Tenancy issued April 15, 2010, was posted to the Tenant's door on April 15, 2010. Service in this manner is deemed to be effected 3 days after posting the document. The Tenant 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 Tenant is presumed to have accepted that the tenancy ended on the effective date of the Notice. The effective date of the Notice was April 28, 2010.

Therefore, the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

Although I am satisfied that some money is owed to the Landlord in unpaid rent, the Landlord was not able to prove the amount owing for the months of February, March and April, 2010. Therefore the Landlord's application for a Monetary Order for unpaid rent for the months of February, March and April, 2010, is dismissed.

The Landlord has been partially successful in his application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenant. Pursuant to the provisions of

Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit being held in trust for the Tenant.

The remainder of the security deposit in the amount of \$350.00 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 2 days after service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct \$50.00 from the security deposit held in trust for the Tenant. The remainder of the security deposit is available on application by either party, to be administered in accordance with the provisions of Section 38 of 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 21, 2010.

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