

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This participatory hearing was scheduled pursuant to a decision issued April 20, 2010 under the Direct Request procedure. This hearing dealt with the landlords' request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlords provided evidence that the tenant was notified of this participatory hearing via registered mail sent to the rental unit on April 23, 2010. The registered mail was unclaimed by the tenant. I was satisfied the tenant was served with notification of this hearing and I proceeded to hear from the landlords without the tenant present.

The landlord requested the Application for Dispute Resolution be amended to withdraw the request to retain the security deposit with the right to make a subsequent application with respect to the security deposit. The landlords' request was granted and the security deposit remains in trust for the tenant to be administered in accordance with the Act.

### Issues(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid rent?

### Background and Evidence

I heard undisputed testimony as follows. A co-tenancy commenced January 15, 2009 and the co-tenants were required to pay rent of \$2,100.00 on the 1<sup>st</sup> day of every month.

A \$1,050.00 security deposit was paid January 12, 2009. At the end of October 2009 one of the co-tenants vacated the rental unit without notice to the landlord. The tenancy continued with the tenant remaining in the rental unit. The remaining tenant is the respondent named in this Application for Dispute Resolution and is herein referred to as the tenant. The tenant failed to pay rent for March 2010. A *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) was posted on the rental unit door on March 31, 2010 indicating an effective date of April 10, 2010 and \$2,180.00 in unpaid rent. The tenant paid \$2,100.00 on April 13, 2010; \$2,100.00 on May 7; and \$2,100.00 on June 3, 2010. Upon receipt of these payments the tenant was issued a receipt for use and occupancy only.

The landlords explained that the \$2,180.00 that appears on the Notice includes \$80.00 for NSF charges and late fees. The tenancy agreement provides for an administrative charge of \$25.00 for an NSF cheque and \$3.00 per day for late fees.

The landlords submitted that \$2,100.00 in rent remains outstanding for March 2010 and the landlords are requesting an Order of Possession effective June 30, 2010 in recognition of the payments receipts for use and occupancy.

### Analysis

Under section 46 of the Act, where a tenant receives a 10 Day Notice to End Tenancy the tenant has five days to either pay the outstanding rent or dispute the Notice.

Otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and the tenant will have to vacate the rental unit by that date. Since the Notice was posted on the door, it is deemed to be received three days later pursuant to section 90 of the Act. Therefore, the effective date is automatically changed to reach April 13, 2010 in accordance with section 53 of the Act.

Upon review of the evidence before me, I am satisfied that the Notice was posted on the door as declared by the landlord and that the tenant did not pay or dispute the Notice by

April 8, 2010. Accordingly, I find the tenancy ended April 13, 2010. I further accept that the landlord has not reinstated the tenancy and the landlord is entitled to an Order of Possession. In accordance with the landlords' request, I grant an Order of Possession effective June 30, 2010. The Order of Possession may be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent of \$2,100.00 for the month of March 2010 and the landlord has been compensated for use and occupancy for the months of April through June 2010. Upon review of the tenancy agreement is entitled to recover \$25.00 for an NSF cheque. I deny the landlords' claim for late fees as the term that provides for late fees in the tenancy agreement does not comply with the Residential Tenancy Regulation that limits the amount of late fees to \$25.00.

I award the filing fee paid for this application to the landlords. I provide for the landlords with this decision a Monetary Order calculated as follows:

Unpaid rent – March 2010	\$ 2,100.00
NSF charge – March 2010 cheque	25.00
Filing fee	50.00
Monetary Order	<u>\$ 2,175.00</u>

The landlords must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The tenancy has ended and the landlords are provided an Order of Possession effective June 30, 2010.

The landlords have been provided a Monetary Order for \$2,175.00 to serve upon the tenant. The security deposit remains in trust for the tenant to be administered in accordance with the provisions 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 08, 2010.

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Dispute Resolution Officer