

## **Decision**

**Dispute Codes:** OPR, OPC, CNC, MNR, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with 2 applications: 1) by the landlord for an order of possession, a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee; 2) by the tenant for cancellation of a notice to end tenancy for cause, an order of possession, and recovery of the filing fee.

Both parties were present at the scheduled start time of the telephone conference call hearing which was 11:30 a.m., and both parties gave affirmed testimony. However, the tenant voluntarily withdrew from the hearing at approximately 11: 45 a.m. which was prior to the completion of the hearing.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on January 19, 2010. Rent in the amount of \$850.00 is payable in advance on the first day of each month. The tenancy agreement reflects that a security deposit of \$425.00 was collected on January 19, 2010; the landlord testified that the agreement was completed in anticipation that the payment would be made as discussed between the parties, however, thereafter the tenant did not ever pay the security deposit.

The landlord issued a 1 month notice to end tenancy for cause dated April 30, 2010. The landlord testified that the notice was served in person on the tenant on that same date. The reason shown on the notice for its issuance is as follows:

Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

Subsequently, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated May 12, 2010, which the landlord states was served in person on the tenant on that same date. Thereafter, the tenants made no payment toward rent and they continue to reside in the unit.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a partial resolution.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the tenants will vacate the unit by no later than **1:00 p.m., Saturday, July 17, 2010**, and that an **order of possession** will be issued in favour of the landlord to that effect.

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with two different notices to end tenancy. The tenants did not file an application to dispute the 1 month notice to end tenancy for cause within the 10 day period available for doing so; specifically, the notice was served on April 30, 2010, and the tenants filed an application to dispute the notice on May 11, 2010.

The tenants did not file any application to dispute the 10 day notice to end tenancy for unpaid rent or utilities, which is dated May 12, 2010. Neither did the tenants pay the outstanding rent within 5 days of receiving the notice.

Based on the affirmed testimony of the landlord and, on a balance of probabilities, I find that a security deposit was not ever collected from the tenants.

As for the monetary order, I find that the landlord has established a claim of \$2,175.00. This is comprised of \$850.00 in unpaid rent for May, \$850.00 in unpaid rent for June, \$425.00 in loss of rental income for half of July, in addition to the \$50.00 filing fee. I therefore grant the landlord a monetary order under section 67 of the Act for \$2,175.00.

### **Conclusion**

Pursuant to the above, I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Saturday, July 17, 2010**. This order must be served on the tenants. Should the tenants 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.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$2,175.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: June 30, 2010

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Dispute Resolution Officer