

## **DECISION**

Dispute Codes        CNR  
                             OPR, OPB, MNR, MND, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 18, 2010 and that the Tenant received it on June 23, 2010. The Landlord said he did not receive a copy of the Tenant's application so on May 25, 2010 his agent went to the rental unit and requested it from the Tenant. Based on the documentary and oral evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?

### Background and Evidence

This tenancy started on April 1, 2010. Rent is \$1,300.00 per month which is payable, according to a term of the Parties' tenancy agreement, on a date to be determined by the Landlord's agent.

The Landlord said that the Tenant agreed that she would pay rent for April 2010 on April 10, 2010 and thereafter on the 1<sup>st</sup> of each month. The Landlord said the Tenant did not pay rent for April when it was due so he approached her again on April 25, 2010 and the Tenant said she would pay the rent in a couple of days. The Landlord said the Tenant did not pay rent for April or May 2010 when it was due and as a result, on May 5, 2010, he served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord said the Tenant has not paid the arrears and now owes rent for the month of June 2010. In the Details of Dispute portion of the Tenant's application, she claimed that she was withholding rent due to the condition of the rental unit.

The Landlord said that the Tenant had a lot of garbage on the rental property so on or about May 7, 2010 he agreed to have it removed at a cost to him of \$240.00 based on

the Tenant's agreement to reimburse him for that cost. The Landlord said the Tenant has not reimbursed him. The Landlord also claimed that the Tenant has damaged the carpets and some doors in the rental unit.

### Analysis

Section 26(1) of the Act says that "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."

In the absence of any evidence from the Tenant to the contrary, I find that rent for April 2010 was due on April 10, 2010 and that rent for each month thereafter was due in advance on the 1<sup>st</sup> day of each month. Based on the evidence of the Landlord and written submissions of the Tenant, I find that the Tenant has not paid the rent arrears set out on the 10 Day Notice dated May 5, 2010. I also find that there is no evidence that the Tenant had a right under the Act to withhold rent. Consequently, I find that there are no grounds for the Tenant's application to cancel the 10 day Notice and it is dismissed without leave to reapply.

I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to a Monetary Order in the amount of \$4,190.00 representing \$3,900.00 in unpaid rent for April, May and June 2010, \$240.00 for garbage removal and \$50.00 for the filing fee paid by the Landlord for this proceeding. As the tenancy has not ended and in the absence of any evidence of damage to the rental unit, I find that the Landlord's claim for compensation for damages is premature and it is dismissed with leave to reapply.

### Conclusion

The Tenant's application is dismissed without leave to reapply. The Landlord's application for compensation for damages to the rental unit is dismissed with leave to reapply. An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$4,190.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 30, 2010.

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Dispute Resolution Officer

