

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

At the beginning of the hearing the Landlord's agent confirmed that the name of the Landlord on the application was missing the word "Inc." and as a result, the style of cause in this matter has been amended to reflect that change.

The Landlord said he served the Tenant with the application and Notice of Hearing (the "hearing package") by registered mail to the rental unit address on May 25, 2010. The Landlord said the Tenant did not pick up the hearing package and it was returned to him unclaimed. Section 90 of the Act says that a document that is mailed is deemed to be received by the recipient 5 days later even if they refuse to pick up the mail. Based on the 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 arrears of rent and utilities and if so, how much?
3. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started approximately 1 and ½ years ago. Rent is \$1,100.00 per month payable in advance on the 1<sup>st</sup> of each month plus 50% of the utilities for the rental property. The Tenant paid a security deposit of \$550.00 at the beginning of the tenancy.

The Landlord said the Tenant had utility arrears and did not pay her rent for the month of May 2010 and as a result, on May 6, 2010, he served the Tenant by registered mail to the rental unit address with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 6, 2010.

The Landlord said that the Tenant has also caused many damages to the rental unit and disturbed other occupants of the rental property and as a result, he also served the Tenant with a One Month Notice to End Tenancy for Cause dated May 6, 2010 by registered mail. The Landlord said the Tenant has not paid any of the rent or utility arrears and has not paid rent for June 2010.

### Analysis

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears of \$2,200.00 for May and June 2010. Based on the utility invoices provided by the Landlord, I also find that the Tenant has utility arrears as follows:

Terasen Gas (Feb. 18 – Mar. 19/10):	\$122.08
Terasen Gas (Mar. 19 – Apr. 20/10):	\$96.51
Terasen Gas (Apr. 20 – May 19/10):	\$73.06
BC Hydro (Feb 19 – Apr. 20/10):	<u>\$259.00</u>
Subtotal:	\$550.65

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 5 days after it was mailed, or in this case, on May 11, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than May 21, 2010.

I find that the Tenant has not paid the overdue rent and utilities and has not applied for dispute resolution. I also find that the Tenant has not applied for dispute resolution to dispute the One Month Notice to End Tenancy for Cause dated May 6, 2010 within the 10 day time limit set out under s. 47(4) of the Act. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect immediately.

I also find that the Landlord is entitled to recover rent and utility arrears in the total amount of \$2,750.65 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent and utility arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$2,200.00
Utility arrears:	\$550.65

Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,800.65
Less: Security Deposit:	(\$550.00)
Accrued Interest:	<u>(\$0.70)</u> from Dec. 1/08
Balance Owning:	\$2,249.95

I find that the Landlord's application for compensation for damages to the rental unit is premature and that part of his claim is dismissed with leave to reapply.

### Conclusion

An Order of Possession effective immediately and a Monetary Order in the amount of **\$2,249.95** 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 29, 2010.

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Dispute Resolution Officer