

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that the caretaker for this building handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent on July 2, 2010. The landlord testified that he sent the tenant the application for dispute resolution package by registered mail on July 12, 2010. The landlord provided the Canada Post Tracking Number for this letter. I am satisfied that the landlord served the tenant with the application for dispute resolution package in accordance with the *Act*.

At the hearing, the landlord testified that he accepted rent payments for July and August 2010 rent for use and occupancy only on July 30, 2010. Although there is presently no unpaid rent, he asked for an Order of Possession based on the tenant's failure to pay her July 2010 rent within five days of service of the 10 Day Notice to End Tenancy for Unpaid Rent.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to recover his filing fees for this application from the tenant?

### Background and Evidence

The landlord testified that this month-to-month tenancy commenced on June 1, 2010. The tenant was to pay \$700.00 on the first of each month. The landlord said that he continues to hold the tenant's security deposit of \$350.00, paid on May 28, 2010.

### Analysis

The tenant failed to pay the July 2010 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. This required the tenant to vacate the premises by July 12, 2010. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

I grant the landlord a 2 day Order of Possession. I authorize the landlord to recover his \$50.00 filing fee by retaining this amount from the tenant's security deposit.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.