

## **DECISION**

Dispute Codes      OPR, MNR, 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; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants 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 he posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on June 4, 2010. He testified that he handed a copy of the application for dispute resolution package to the tenants on July 14, 2010. I accept that the landlord has served these documents to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary order for unpaid rent? Is the landlord entitled to recover his filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that the tenants moved to this unit following a fire in another of the landlord's rental units on April 5, 2010. Rent was set at \$625.00 per month, payable on the first of each month. The landlord testified that he continued to hold the \$337.50 security deposit that the tenants paid on July 5, 2006 when they were residing in the other rental unit.

He testified that the tenants did not pay their June 2010 rent on time. When he issued the notice to end tenancy, he said that they owed part of the May 2010 rent and all of the June 2010 rent. He testified that the tenants did not pay any of the \$925.00 in

outstanding rent within five days of receiving the notice to end tenancy. He asked for a monetary order for July, August and September 2010 as he has not received any rental payments since June 23. He also asked for an Order of Possession and recovery of his filing fee for this application.

### Analysis

#### Order of Possession

The tenants failed to pay the June 2010 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy and required the tenant to vacate the premises by June 18, 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 tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Monetary Order for Rental Arrears

I find that the landlord is entitled to receive an order for unpaid rent for July, August and September 2010. I issue the attached monetary order that includes the landlord's application for \$1,875.00 in unpaid rent for this period.

The landlord testified that he continues to hold a security deposit of \$337.50 plus interest from July 5, 2006 to the date of this decision. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. I make a monetary Order in favour of the landlord as follows:

Rental Arrears for July 2010	\$625.00
Rental Arrears for August 2010	625.00
Rental Arrears for September 2010	625.00
Less Security Deposit and Interest (\$337.50 plus \$11.07 interest = \$348.57)	-348.57
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$1,576.43</b>

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*.