

## 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 and utilities pursuant to section 67; and
- authorization to recover the 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 a 10 Day Notice to End Tenancy for Unpaid Rent was handed to the tenant on June 16, 2010. The landlord testified that she sent the tenants copies of the application for dispute resolution by registered mail on July 30, 2010. She provided Canada Post Tracking Numbers. She said that she also handed the male tenant a copy of the application for dispute resolution. I am satisfied that the landlord has served the above documents to the tenants in accordance with the *Act*.

At the hearing, the landlord asked to amend the names of the tenants from the five names originally identified in the application for dispute resolution to the two tenants identified above. As the two tenants noted above are the recipients of the landlord's application for dispute resolution, I amended the landlord's application as requested.

### Issues(s) to be Decided

The landlord testified that this month-to-month tenancy commenced on May 1, 2010. The tenants were to pay \$1,200.00 per month on the first of each month. She said that she continues to hold the tenant's \$600.00 security deposit paid on April 26, 2010.

### Background and Evidence

The landlord provided the following record of the tenants' rent payments since commencing this tenancy:

<b>Date of Payment</b>	<b>Amount</b>
April 26, 2010	\$600.00
June 3, 2010	600.00
July 6, 2010	600.00
July 26, 2010	600.00
July 30, 2010	1,000.00
August 25, 2010	600.00
September 14, 2010	300.00
<b>Total Rent Paid During Tenancy</b>	<b>\$4,300.00</b>

Over this five-month period of their tenancy, the landlord testified that the tenants were responsible for paying \$6,000.00 in rent. The landlord testified that \$1,700.00 in rent remains owing from the commencement of this tenancy.

The landlord also testified that the tenants have not paid Terasen Gas bills during this period of \$84.61 from June 11, 2010, \$43.24 from July 27, 2010, and \$45.52 from August 13, 2010. She testified that the tenants owed a total of \$173.37 in unpaid utilities as of the date of this hearing.

The landlord asked for a monetary Order for the unpaid rent and unpaid utilities, plus recovery of the landlord's filing fee for this application.

### Analysis

#### Order of Possession

The tenants failed to pay the rent owing 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 their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by June 27, 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(s). 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 a monetary award for \$1,700.00 in unpaid rent and \$173.37 in unpaid utilities as requested by the landlord.

The landlord testified that she continues to hold the tenants' security deposit of \$600.00 plus interest from April 26, 2010 until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord has been successful in this application, I allow the landlord to recover the filing fee for this application from the tenants.

#### Conclusion

I grant the landlord a 2 Day Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a monetary Order in the following terms.

<b>Item</b>	<b>Amount</b>
Unpaid Rent	\$1,700.00
Unpaid Utilities	173.37
Less Security Deposit	-600.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,323.37</b>

I allow the landlord to retain the tenants' security deposit in partial satisfaction of this monetary Order. As set out above, I authorize the landlord to recover the filing fee for this application from the tenants.

The tenant(s) must be served with a copy of the monetary Order as soon as possible. Should the tenant(s) 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*.