

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNT, O

### Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent or utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for cancellation of the landlord's notice to end tenancy for unpaid rent or utilities pursuant to section 46 of the *Act* and identified other unspecified reasons for his application for dispute resolution.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that his building manager handed the tenant the 10 Ten Day Notice to End Tenancy for Unpaid Rent on August 2, 2010 and a copy of his application for dispute resolution on August 13, 2010. The tenant confirmed receiving these documents. The tenant testified that he handed a copy of his application for dispute resolution to the landlord's representative on August 9, 2010. The landlord confirmed receiving the tenant's application. I am satisfied that these documents were served in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to have the landlord's notice to end tenancy for unpaid rent cancelled? Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary Order for unpaid rent or utilities? Is the landlord entitled to recover his filing fee for this application?

### Background and Evidence

This tenancy commenced on December 1, 2009. Monthly rent was presently set at \$835.00, payable on the first of each month. The parties agreed that the tenant did not pay his August rent.

The tenant said that he had spoken with one of the landlords and had been hopeful that he would be able to pay the landlord the outstanding rent by the time of the hearing. As he was unable to do so at this time, he said that he realized that he would have to move. He said that he had rented a truck to commence that process. He told the landlord that he planned to move by October 8, 2010. Although the landlord did not disagree with the tenant's plan to move, he asked for an Order of Possession as he said that he needed to be able to take court action if the tenant did not vacate the premises.

The landlord asked for a monetary award for \$835.00 for unpaid rent owing from this tenancy. He also asked for an additional \$210.00 for the first portion of October. The landlord also asked that he be able to recover his filing fee for this application.

### Analysis

#### Tenant's Application for Cancellation of the Landlord's Notice to End Tenancy and Landlord's Application for an Order of Possession

I dismiss the tenant's application to have the landlord's notice to end tenancy for unpaid rent cancelled. I am satisfied by the landlord's undisputed evidence that there remains unpaid rent from this tenancy. I provide the landlord with a formal copy of an Order of Possession effective at one o'clock in the afternoon on October 8, 2010. 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.

#### Landlord's Application for a Monetary Order

I am satisfied by the landlord's undisputed evidence that the landlord is entitled to a monetary award of \$835.00 for one month's unpaid rent and \$210.00 for a portion of October 2010.

The landlord testified that he continues to hold the tenant's security deposit of \$417.50 plus interest from December 1, 2009 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 deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover his \$50.00 filing fee.

### Conclusion

I dismiss the tenant's application to cancel the landlord's notice to end tenancy for unpaid rent. I issue the landlord a formal copy of an Order of Possession effective on October 8, 2010. 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.

I issue a monetary Order in the landlord's favour under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rent (\$835.00 + \$210.00)	\$1,045.00
Less Security Deposit	-417.50
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$677.50</b>

This monetary Order allows the landlord to retain the tenant's security deposit and to recover the landlord's filing fee for this application.

The landlord is provided with these monetary 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.