

## **DECISION**

Dispute Codes      OPR, MNR, 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, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 14, 2010. 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 rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on April 1, 2009 as a 1 year fixed term tenancy with an expiry date of March 31, 2010 and then renewed as a month to month tenancy. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 on March 18, 2009.

The Landlord said that the Tenant did not pay \$170.00 of rent for July, 2010 when it was due and as a result, on August 3, 2010 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2010 to the Tenant. The Landlord said the Tenant has unpaid rent for August and September, 2010.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord does not know what the Tenant's plans are.

The Landlord also sought to recover a \$25.00 late payment fee that is written into the Tenancy agreement for August and September, 2010 and the Landlord requested to recover the \$50.00 filing fee for this proceeding.

The Landlord also indicated that she has applied for a claim for compensation for loss of September, 2010 rental income of \$650.00 as she does not have possession of the rental unit and she is concerned that she may not be able to rent it out for September, 2010.

The Landlord also said that the Tenant has paid \$100.00 towards his rent on September 4, 2010. The Landlord issued a receipt that stated the payment was for only "Use and Occupancy" of the rental unit.

### Analysis

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 pay the overdue rent or apply for dispute resolution. If the 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 on the day it was served, or on August 3, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 8, 2010.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for July in the amount of \$170.00 and the August, 2010 rent, in the amount of \$650.00. I further find that the Landlord is entitled to recover a loss of rental income to September 20, 2010, in the amount of \$433.33 ( $\$650.00 \times 20$  of 30 days of September). The Landlord has an obligation to mitigate her damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible. I further find that the Landlord is entitled to recover the late charge of \$25.00 for August and September, 2010.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant 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 arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$820.00
	Loss of Rental Income:	\$433.33
	Late payment fees(2)	\$ 50.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,353.33
Less:	Security Deposit	\$325.00
	Accrued Interest	\$ 0.00
	Payment 04/09/2010	\$100.00
	Subtotal:	\$425.00
	Balance Owing	\$ 928.33

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$928.33 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: September 8, 2010.

Dispute Resolution Officer