

## **DECISION**

Dispute Codes      OPC, 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. He testified that he posted a 1 Month Notice to End Tenancy for Cause on the tenant's door on August 27, 2010. He submitted a written statement to this effect signed by a witness to the posting. He testified that he sent the tenant a copy of his application for dispute resolution hearing package by registered mail on September 14, 2010. He also testified that he sent a copy of his amended dispute resolution hearing package to the tenant by registered mail on October 5, 2010. He provided Canada Post Tracking Numbers to confirm these mailings. I am satisfied that the landlord has served the application for dispute resolution to the tenant 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? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary Order requested? Is the landlord entitled to recover his filing fee from the tenant?

### Background and Evidence

The landlord testified that this fixed term tenancy commenced on April 12, 2010. The tenancy was to end on October 31, 2010. Monthly rent is set at \$680.00 and the landlord continues to hold the tenant's \$340.00 security deposit paid on April 10, 2010.

The landlord testified that there have been many problems arising out of this tenancy which led him to provide the tenant with the 1 Month Notice to End Tenancy for Cause. In that notice, he cited the following reasons for citing an end to this tenancy:

*Tenant has:*

*significantly interfered with or unreasonably disturbed another occupant or the landlord;*

*seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

*Tenant has engaged in illegal activity that has, or is likely to:*

*adversely affect the quiet enjoyment, security safety or physical well-being of another occupant or the landlord.*

The landlord provided written evidence that the tenant sent him a letter advising him that she plans to vacate the rental premises on or before October 31, 2010. She indicated that she planned to complete her move from the rental premises by mid-October. As the landlord does not believe the tenant has vacated the rental premises, he asked for an Order of Possession. He also testified that the tenant has not paid the October rent of \$680.00 and asked for a monetary Order in that amount, to be partially satisfied by the tenant's security deposit. He also requested recovery of his filing fee.

### Analysis

#### Order of Possession

The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice to End Tenancy for Cause. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 30, 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.

#### Monetary Order

I accept the landlord's undisputed testimony that the tenant has not paid rent for October 2010. Pursuant to section 67 of the *Act*, I issue a monetary award in the landlord's favour in the amount of \$680.00.

#### Security Deposit

In accordance with section 38 of the *Act*, I allow the landlord to retain the tenant's \$340.00 security deposit in partial satisfaction of the monetary award in this decision. No interest is payable over this period.

#### Filing Fee

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

#### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). 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 the landlord a monetary Order of \$390.00 in the following terms which allows him to recover unpaid October 2010 rent and his filing fee for this application and to retain the tenant's security deposit in partial satisfaction of this Order.

<b>Item</b>	<b>Amount</b>
Unpaid October 2010 Rent	\$680.00
Less Security Deposit	-340.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$390.00</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*.