

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, 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 for money owed or compensation for loss under the *Act*, regulation or tenancy agreement 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. She testified that she posted a 10 Day Notice to End Tenancy on the tenant's door on September 2, 2010. She testified that she sent the tenant a copy of the landlord's application for dispute resolution hearing package by registered mail on September 17, 2010. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord has served the notice to end tenancy and 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 for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and loss arising from this tenancy? Is the landlord entitled to retain the tenant's security deposit? Is the landlord entitled to recover the filing fees for this application from the tenant?

### Background and Evidence

The landlord testified that the tenant moved into this rental unit from elsewhere on this property on May 1, 2010. This fixed term tenancy was to end on October 30, 2010.

Monthly rent for this unit was established at \$925.00. The landlord testified that she continued to hold the tenant's \$462.50 security deposit paid on April 8, 2010.

The landlord applied for an Order of Possession for non-payment of rent for September 2010. The landlord testified that the tenant did not pay rent of \$925.00 due on September 1, 2010, nor has he paid anything since receiving the notice to end tenancy. The landlord also applied for a monetary award of \$2,835.00 for the months of September, October and November 2010, plus late charges for each of these months, as well as recovery of the \$50.00 filing fee for this application.

### Analysis

#### Order of Possession

The tenant failed to pay the September 2010 rent within five days of being served with the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of service of this notice to end tenancy. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days required the tenant to vacate the premises by September 16, 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 for Rental Arrears

I find that the landlord is entitled to receive an order for unpaid rent for September and October 2010, as well as the \$20.00 late payment fees for these months as set out in the Residential Tenancy Agreement. The landlord testified that she is unlikely to be in a position to rent the premises for much of November 2010, as vacant possession of the premises will not likely be attainable until early November 2010. As such, I allow a monetary order for the landlord's loss of rent for half of November 2010, an amount of \$462.50 (i.e.  $\$925.00 \times 50\% = \$462.50$ ).

I allow the landlord to retain the tenant's \$462.50 security deposit plus interest in partial satisfaction of the monetary award. No interest is payable over this period. 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 grant a monetary Order in favour of the landlord as follows:

<b>Item</b>	<b>Amount</b>
Unpaid September 2010 Rent	\$925.00
Late Fee September 2010	20.00
Unpaid October 2010 Rent	925.00
Late Fee October 2010	20.00
Loss of Rent – Half of November 2010 (50% of \$925.00 = \$462.50)	462.50
Less Security Deposit	-462.50
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,940.00</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*.