

## **DECISION**

**Dispute Codes:** OPR, MNSD, MNR, FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and utilities; to apply the security deposit towards his monetary award, and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he sent each of the Tenants the Notice of Hearing documents by express post to the rental unit on September 15, 2010. The Landlord provided copies of the express post mail receipts and tracking numbers. The Landlord testified that the documents were returned to him, unclaimed.

Based on the testimony and documentary evidence provided by the Landlord, I am satisfied that the Tenants were served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents, whether or not the Tenants choose to accept delivery of the documents. Despite being deemed served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the matter proceeded in their absence.

### **Issue(s) to be Decided**

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order for unpaid rent and utilities?

## **Background and Evidence**

### **Landlord's testimony**

The Landlord testified that the Notice to End Tenancy issued September 3, 2010, was posted to the Tenants' door at the rental unit on September 3, 2010.

The Tenants moved into the rental unit on July 24, 2010. The Tenant paid a security deposit in the amount of \$850.00 on July 10, 2010. Monthly rent is \$1,700.00, due on the first day of each month.

The Tenant's rent cheque for August was returned to the Landlord because of insufficient funds. The Tenants paid \$1,400.00 towards August's rent, by cash, on August 2 or 3, 2010. The Tenants have paid no further rent for August and have not paid rent for the months of September or October, 2010. The Tenants remain in the rental unit.

The tenancy agreement provides that the Tenants are responsible for paying the utilities, including gas and hydro. The Tenants owe the Landlord \$53.00 for hydro and \$24.00 for gas for the period up to September 13, 2010.

### **Analysis**

I accept the Landlord's testimony that the Tenants were duly served with the Notice to End Tenancy pursuant to the provisions of Section 88(g) of the Act. Service by posting the Notice on the Tenants' door is deemed to be effective on the third day after posting the Notice. The Tenants did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that

the tenancy ended on the effective date of the Notice. I find that the tenancy ended on September 16, 2010.

Therefore, the Landlord is entitled to an Order of Possession and I make that order **effective 2 days after service of the Order upon the Tenants.**

Section 46(6) of the Act states:

**Landlord's notice: non-payment of rent**

**46** (6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Landlord was not aware of the amount of utilities owed when he filed his Application for Dispute Resolution and therefore he did not give the Tenants written demand for unpaid utilities. Therefore, this portion of his application is dismissed with leave to reapply.

Based on the undisputed testimony of the Landlord and the absence of any evidence to the contrary from the Tenants, the Landlord has established his monetary claim, as follows:

Unpaid rent for August, 2010	\$300.00
Unpaid rent for September, 2010	\$1,700.00
Loss of rent for October, 2010	<u>\$1,700.00</u>
TOTAL:	\$3,700.00

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of its monetary claim. No interest has accrued on the

security deposit.

The Landlord has been successful in his application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenants.

I hereby provide the Landlord with a Monetary Order against the Tenants, calculated as follows:

Rent arrears and loss of rent	\$3,700.00
Recovery of the filing fee	\$50.00
Less security deposit	<u>&lt;\$850.00&gt;</u>
TOTAL amount due to Landlord after set off	\$2,900.00

### **Conclusion**

I grant the Landlord an Order of Possession **effective two days from service of the Order upon the Tenants**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of **\$2,900.00** against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

The Landlord's application with respect to unpaid utilities is dismissed with leave to reapply

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: October 21, 2010.

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