

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF, MT, CNR

### **Introduction**

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

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

The tenant did not attend this hearing. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords provided written evidence of their service of a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant by hand on December 2, 2010. They testified that they sent the tenant a copy of their dispute resolution hearing package by registered mail on January 3, 2011. They provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlords have served these documents to the tenant in accordance with the *Act*.

As the tenant did not attend the hearing by 11:16 a.m., I dismiss her application without leave to reapply.

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

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and loss arising out of this tenancy? Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary award they requested? Are the landlords entitled to recover their filing fee for their application from the tenant?

### Background and Evidence

The landlords said that the tenant moved into the rental premises on or about October 13, 2010. Monthly rent was set at \$1,000.00, payable on the first of each month. The tenant did not sign a tenancy agreement, but did pay a security deposit of \$500.00, which the landlords continue to hold.

The landlords maintain that the only rent payment that the tenant made was one \$500.00 payment she made on November 28, 2010. They testified that they applied this payment to the \$500.00 she owed for October 2010. They maintained that the tenant has not paid the \$1,000.00 in rent for November 2010, December 2010 and January 2011. The tenant maintained in her application and in documents she submitted that she had receipts for rent payments she made for this tenancy.

The landlords requested an Order of Possession and a monetary award of \$2,100.00 in their application for dispute resolution. At the hearing, they asked for an additional \$1,000.00 because they have received no rent from the tenant for January 2011, following their application for dispute resolution.

### Analysis

#### Order of Possession

The landlords entered undisputed testimony that the tenant did not pay any portion of the \$2,500.00 in rent identified as owing on the 10 Day Notice to End Tenancy for Unpaid Rent issued on December 2, 2010. Although the tenant did apply for dispute resolution to cancel the this notice on December 30, 2010, the tenant did not make application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The tenant did not explain why she needed more time to apply for dispute resolution. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of the actions outlined above within five days of receiving the December 2, 2010 notice 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 December 12, 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 Award

Based on the undisputed evidence presented by the landlords at the hearing, I issue a monetary award in the landlord's favour in the amount of \$3,000.00. This award compensates the landlords for unpaid rent from November 2010, December 2010 and

January 2011. I allow the landlords to retain the tenant's security deposit plus interest in partial satisfaction of this award. No interest is payable over this period. Since the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee for this application from the tenant.

### Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' 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 a monetary award in the landlords' favour in the following terms which allows the landlords to obtain unpaid rent and to obtain recovery of their filing fee for this application. I allow the landlords to retain the tenant's security deposit in partial satisfaction of this monetary award.

<b>Item</b>	<b>Amount</b>
Unpaid November 2010 Rent	\$1,000.00
Unpaid December 2010 Rent	1,000.00
Unpaid January 2011 Rent	1,000.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$2,550.00</b>

I dismiss all elements of the tenant's application for dispute resolution without 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*.