

## **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 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 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. The landlord entered into written evidence a copy of his Ten Day Notice for Unpaid Rent that he handed to an adult at the tenant's rental suite and posted on the tenant's door on December 5, 2010. He provided written evidence that he sent the tenant his dispute resolution hearing package by registered mail on January 6, 2011. He provided a copy of the Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for unpaid rent and loss of rent arising from this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover his filing fee from the tenant?

### Background and Evidence

The landlord testified that this one-year fixed term tenancy commenced on August 1, 2010. Monthly rent is set at \$1,800.00, payable on the first of each month. He continues to hold the tenant's \$900.00 security deposit paid on July 25, 2010. He testified that the tenant has not paid any rent for December 2010 or January 2011. Although he has advertised the rental unit, he does not anticipate being able to re-rent the rental unit until at least mid-February 2011. He applied for a monetary award of \$4,700.00.

### Analysis

#### Order of Possession

Based on the undisputed evidence of the landlord, the tenant failed to pay the December 2010 rent within five days of receiving 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 receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five 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 December 23, 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

I issue a monetary award in the landlord's favour for \$3,600.00 in unpaid rent arising from this tenancy for December 2010 and January 2011. I also accept the landlord's testimony that he is likely to incur losses of at least \$900.00 for the first two weeks of February 2011, as he continues with his efforts to re-rent this suite. I issue a monetary award of \$900.00 to compensate the landlord for his loss of rent for February 2011.

I allow the landlord to retain the tenant's \$900.00 security deposit plus interest in partial satisfaction of the above monetary award. No interest is payable over this period. I also allow the landlord to recover his \$50.00 filing fee for his 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 a monetary Order in the following terms which provides the landlord with recovery of the unpaid rent, his loss of rent for part of February 2011, and allows him to recover his filing fee for this application.

<b>Item</b>	<b>Amount</b>
Unpaid December 2010 Rent	\$1,800.00
Unpaid January 2011 Rent	1,800.00
Loss of Rent for February 2011	900.00
Less Security Deposit	-900.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$3,650.00</b>

I allow the landlord to retain the tenant's security deposit plus interest.

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*.