

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. The landlord participated in the conference call hearing but the tenants did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing documents. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issues to be Decided

Is the landlord entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started September 18, 2010 with monthly rent of \$575.00, the tenant paid a security deposit of \$287.50. On December 29, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant paid \$360.00 towards the rent owed on January 5, 2011 and the landlord gave the tenant a receipt stating 'for use and occupancy only'. The landlord stated that the tenant currently owes January 2011 rent of \$246.00 and February 2011 rent of \$575.00 for a total of \$821.00 unpaid rent. The landlord is seeking a monetary order in the amount of \$821.00 for unpaid rent.

As the tenant still occupies the rental unit and has made no effort to pay the rent that is due, the landlord has requested an order of possession effective 2 days after service on the tenant.

The landlord has made application for an early end of tenancy and this portion of the landlord's application is hereby dismissed.

### Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute

resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent.

The landlord has charged the tenant a \$25.00 'eviction fee' which does not comply with the *Act* or *Regulations* and this amount will be deducted from the unpaid rent due.

I find that the landlord has established a claim for \$796.00 in unpaid rent.

The landlord is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I hereby grant the Landlord an Order of Possession, effective 2 days after 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 find that the landlord has established a monetary claim for \$796.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$287.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$558.50** ( $\$796.00 + \$50.00 = \$846.00 - \$287.50 = \$558.50$ )

A monetary order in the amount of **\$558.50** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order 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*.

Dated: February 2, 2011

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Residential Tenancy Branch