

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, that the tenant has breached the tenancy agreement, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

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

### Summary of Background and Evidence

This fixed term tenancy started June 1, 2010 with rent of \$1875.00 and the tenants paid a security deposit of \$937.50. On January 7, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant did not pay the rent at the start of January 2011 and that the tenant stated he would pay the rent by January 7, 2011. The landlord stated that the tenant paid \$1200.00 rent on January 7, 2011 and that same day she served the tenant with a 10 day notice to end tenancy for unpaid rent. Five days later the tenant paid \$400.00 towards the January rent and the landlord gave the tenant a receipt stating 'for use and occupancy only'. On January 15, 2011 after a call from the tenant the landlord went to the property as the tenant stated he had the \$275.00 balance owing however upon arrival to the property the tenant told the landlord he did not have the balance of the rent and that he was not going to pay any further rent to the landlord.

The landlord stated that the tenant currently owes \$275.00 for January 2011 rent and \$1875.00 for February 2011 rent.

The landlord is seeking a monetary order for unpaid rent in the amount of \$2150.00. As the tenants still occupy the rental unit and have not paid the rent that is due the landlord has requested an order of possession effective 2 days after service on the tenants.

The tenant testified that he now had the \$275.00 for the January 2011 rent but that he is going through a hard time and does not have the \$1875.00 February 2011 rent. The tenant requested the landlord work with him and not evict him as he has 2 children and

has always paid his rent in the past. The tenant requested clarification on whether the landlord could physically remove him from the rental unit with an order of possession.

### Analysis

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 an order of possession and a monetary order for unpaid rent.

I find that the landlord has established a claim for \$2150.00 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 \$2150.00 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 \$937.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1262.50** ( $\$2150.00 + \$50.00 = \$2200.00 - \$937.50 = \$1262.50$ )

A monetary order in the amount of **\$1262.50** 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 1, 2011

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Residential Tenancy Branch