

## **DECISION**

Dispute Codes      OPR, MND, 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 pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent of \$960.00 on January 5, 2011. The parties agreed that the landlord sent a copy of his dispute resolution hearing package to the tenant by registered mail on January 31, 2011. The tenant confirmed receiving this package. I am satisfied that the landlord served the above documents in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of 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 for this application from the tenant?

### Background and Evidence

The tenant said that she started living in this rental unit on March 15, 2010. The landlord maintained that the tenant signed a fixed term Residential Tenancy Agreement (the Agreement) for a one-year tenancy commencing on June 1, 2010. He said that this tenancy was scheduled to end on May 31, 2011. The tenant said that she had a month-to-month tenancy. Neither party submitted a written copy of the Agreement. The lack of certainty regarding the type or duration of the Agreement made no difference to the landlord's application for a monetary award for unpaid rent, a \$25.00 NSF fee outstanding, and a request for an Order of Possession.

The parties agreed that the tenant did not pay any portion of the January 2011 rent within five days of receiving the landlord's Notice. The parties agreed that the landlord accepted and cashed a \$480.00 cheque from the tenant on January 18, 2011 for use and occupancy only. The parties agreed that the tenant has given the landlord an additional cheque negotiable on February 15, 2011, the date of this hearing. As of this point, the landlord has not attempted to negotiate this cheque.

The landlord applied for a monetary award of \$2,465.00, which was to cover unpaid rent for January, February and March 2011. At the hearing, the landlord stated that this amount should be reduced by the \$480.00 cheque received from the tenant on January 18, 2011.

### Analysis

#### Order of Possession

The tenant failed to pay the January 2011 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 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 his tenancy on January 16, 2011. As that has not occurred, I find that the landlord is entitled to an Order of Possession as of one o'clock in the afternoon on February 28, 2011. 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 by that time, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Monetary Award

I find that the landlord is entitled to a monetary award of \$480.00 for unpaid rent owing from January 2011, in the event that the cheque provided by the tenant cannot be negotiated. If that cheque is negotiable, I reduce the amount of the total monetary award by the amount of that cheque.

I also allow a monetary award in the landlord's favour in the amounts of \$960.00 for unpaid rent from February 2011 and \$25.00 to cover an NSF cheque provided to the landlord by the tenant. I make no monetary award for March 2011, as the landlord will be gaining occupancy of the rental unit by the beginning of that month.

I allow the landlord to retain the tenant's \$480.00 security deposit plus interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Since the landlord was successful in this application, I allow the landlord to recover his filing fee for this application from the tenant.

### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective on or before one o'clock in the afternoon on February 28, 2011. 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 landlord's favour in the following terms which allows the landlord to recover unpaid rent, losses arising out of this tenancy, his application fee and to retain the tenant's security deposit.

<b>Item</b>	<b>Amount</b>
Unpaid January 2011 Rent	\$480.00
NSF Fee	25.00
Unpaid February 2011 Rent	960.00
Less Security Deposit	-480.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,035.00</b>

The tenant has provided the landlord with a cheque payable on February 15, 2011, which can be applied to the above monetary Order in the event that the landlord is able to negotiate the February 15, 2011 cheque.

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*.