

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on February 17, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

### Background and Evidence

This tenancy started on December 1, 2010 as a 1 year tenancy with an expiry date of December 31, 2011. Rent is \$845.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$422.50 on December 3, 2010.

The Landlord said that the Tenant did not pay \$100.00 of rent for February, 2011, when it was due and as a result, on February 3, 2011, he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2011 on the door through the mail slot of the rental unit on February 3, 2011. The Landlord said the Tenants are living in the rental unit and have unpaid rent for February, 2011 of \$100.00. The Landlord said he is requesting an Order of Possession with an effective vacancy date as soon as possible if his application is successful.

The Landlord continued to say that the unpaid rent is a result of the Tenant holding back \$100.00 that he believes is due to him for painting the rental unit. The Property Manager said that no arrangement to reduce the rent was agreed to by the Landlord or himself and the Tenant knew that the full amount of rent was due for February, 2011.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section

46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after it is posted on the door, or on February 6, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than February 11, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for February, 2011, in the amount of \$100.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 100.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$ 150.00
Balance Owing		\$ 150.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$150.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch