

## **Decision**

**Dispute Codes:** OPR, MNR, MNSD, FF

### **Introduction**

This hearing dealt with the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to any or all of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, the year-long fixed term of tenancy began on April 27, 2010. Monthly rent is shown on the agreement as \$900.00, however, the landlord's agent testified that an incentive offered to tenants during the first year of tenancy is a reduction in rent to \$825.00 per month. A security deposit of \$450.00 was collected.

Arising from rent which remained overdue on January 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 5, 2011 (\$575.74: December, 2010 & \$900.00: January 2011 = \$1,475.74). The notice was served by way of posting on the tenant's door on that same date. Subsequently, the tenant made the following payments toward rent:

\$250.00: January 25, 2011

\$900.00: January 27, 2011

Sub-total: \$1,150.00

Unpaid balance of rent: \$325.74 (\$1,475.74 - \$1,150.00)

Unpaid balance of rent after *correction* of monthly rent from \$900.00 to \$825.00:

\$250.74 (\$325.74 - \$75.00)

Following the above 2 payments, receipts were issued by the landlord which read to the effect that payment was accepted on the basis of use and occupancy only.

The tenant continues to reside in the unit and the landlord's agent requested that an order of possession be issued effective February 28, 2011.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated January 5, 2011. The tenant did not pay the full amount of outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$1,125.74. This is comprised of \$250.74 from January 2011, in addition to \$825.00 for February 2011, as well as the \$50.00 filing fee. I order that the landlord retain the security deposit of \$450.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$675.74 (\$1,125.74 - \$450.00).

### **Conclusion**

I hereby issue an order of possession in favour of the landlord effective not later than 1:00 p.m., Monday, February 28, 2011. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$675.74. This order may be served on the tenant, filed in the Small Claims Court 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*.

DATE: February 14, 2011

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Residential Tenancy Branch