

## **DECISION**

Dispute Codes      OPC, 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; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she posted a 1 Month Notice to End Tenancy for Cause on the tenant's door on February 2, 2011. She testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail on February 22, 2011. She provided the Canada Post Tracking Number for that mailing. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for her application from the tenant?

### Background and Evidence

This fixed term tenancy commencing on November 13, 2010 was scheduled to end on May 15, 2011. Monthly rent is set at \$1,100.00 payable in two equal parts on the first and fifteenth of each month. The landlord continues to hold the tenant's \$550.00 security deposit.

The landlord entered written and oral evidence that the tenant has only paid her rent on time on December 1, 2010. The landlord testified the tenant has been late in her rent payments on every occasion since then. She entered into written evidence copies of three notices from her bank indicating that the tenant was responsible for submitting NSF cheques for her rental payment. The landlord requested a 2 day Order of Possession as the effective date identified in her 1 Month Notice to End Tenancy, March 2, 2011, has now passed.

### Analysis

The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice to End Tenancy for Cause. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of

his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 2, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. 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 within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since the landlord has been successful in her application, I allow her to recover her \$50.00 filing fee from the tenant. I order the landlord to retain \$50.00 from the tenant's security deposit in order to implement the recovery of the landlord's filing fee.

#### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$50.00 from the tenant's security deposit. The remaining value of the tenant's security deposit held by the landlord is now reduced from \$550.00 to \$500.00.

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*.