

## **DECISION**

Dispute Codes      FF, MNR, MNSD, OPR

### 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 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.

The tenant did not attend this hearing, although I waited until 9:42 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.

The landlord said that he handed the tenant a One Month Notice to End Tenancy for Cause (the One Month Notice) on February 27, 2011. He testified that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 2, 2011. He testified that he handed a copy of his dispute resolution hearing package to one of the tenant's roommates at the tenant's rental suite on March 9, 2011. He testified that he spoke with the tenant on the evening of March 9, 2011 and confirmed that the tenant had received the dispute resolution hearing package. 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 for unpaid rent? Is the landlord entitled to a monetary Order for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in satisfaction of the monetary Order? Is the landlord entitled to recover his filing fee for this application from the tenant?

### Background and Evidence

This month-to-month tenancy commenced on February 1, 2011. Monthly rent was set at \$1,800.00, payable on the first of the month. The landlord testified that he continues to hold the tenant's \$900.00 security deposit paid on February 1, 2011.

The landlord said that after he provided the One Month Notice to the tenant, the tenant paid only \$450.00 of his \$1,800.00 in rent on March 1, 2011. After the tenant received the landlord's 10 Day Notice, the tenant paid another \$600.00 towards his outstanding

March 2011 rent on March 8, 2011. The landlord testified that he notified the tenant when he received the \$600.00 payment that his acceptance of this payment was for use and occupancy only and that his tenancy agreement was not continuing.

The landlord asked for an Order of Possession on the basis of the 10 Day Notice and sought a monetary award of \$750.00 for unpaid rent owing from March 2011. His application for dispute resolution also sought a monetary award of \$1,800.00 for April 2011, permission to keep the tenant's security deposit, and recovery of his filing fee.

### Analysis

#### Order of Possession

The tenant failed to pay all of the \$1,350.00 in unpaid rent identified as owing on March 2, 2011 within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day 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 the effective date of the notice. In this case, this required the tenant to vacate the premises by March 13, 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.

#### Monetary Award

Based on the landlord's undisputed testimony, I am satisfied that the landlord is entitled to a monetary award of \$750.00 for the unpaid portion of the tenant's March 2011 rent. As the landlord is uncertain whether the tenant is planning to vacate the rental unit in accordance with the landlord's original One Month Notice by March 31, 2011, I am dismissing the landlord's application for a monetary award for unpaid rent for April 2011 with leave to reapply.

I allow the landlord to retain \$750.00 from the tenant's security deposit to implement my decision regarding the tenant's unpaid rent for March 2011. I also allow the landlord's application to recover his \$50.00 filing fee for this application from the tenant. The remaining value of the tenant's security deposit held by the landlord is reduced from \$900.00 to \$100.00 to reflect these decisions.

### 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(s). 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 allow the landlord a monetary award of \$750.00 for unpaid rent from March 2011 and \$50.00 to recover the landlord's filing fee from the tenant. To implement this monetary award, I allow the landlord to retain \$800.00 from the tenant's security deposit. The value of the tenant's security deposit currently held by the landlord is now set at \$100.00.

I dismiss the landlord's application for a monetary award for unpaid rent for April 2011 with leave to reapply. The landlord is also at liberty to reapply to retain the remaining portion of the tenant's security deposit once the tenant has vacated the rental unit.

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*.