

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

### Issue(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 keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on August 10, 2010. Rent is \$850.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant had rent arrears for February 2011 and did not pay rent for March 2011 when it was due and as a result, on March 8, 2010 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 8, 2011 on the rental unit door. The Parties agree that the Tenant paid \$1,000.00 on April 11, 2011 for which he was given a receipt stating that his payment was accepted for "use and occupancy only."

### 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 either pay the overdue rent or apply for dispute resolution. If a 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 will end 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 3 days after it was posted, or on March 11, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than March 16, 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 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears in the amount of \$700.00 for March 2011 and pro-rated rent for April 1-14, 2011 of \$396.67. I further find that the Landlord is entitled to be compensated for a loss of rental income for April 15 – 30, 2011 in the amount of \$453.33 as well as the \$50.00 filing fee for this proceeding.

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,096.67
Loss of rental income:	\$453.33
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,600.00
Less: Security Deposit:	(\$425.00)
Accrued Interest:	<u>(\$0.00)</u>
BALANCE OWING:	\$1,175.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,175.00** 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*.

Dated: April 14, 2011.

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Residential Tenancy Branch