

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This is an application by the Landlord for an order of possession resulting from a 10 day notice to end tenancy for unpaid rent and a monetary order request for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

### Background and Evidence

Both parties agreed that there was no signed tenancy agreement and that the monthly rent is \$1,500.00 payable on the 1<sup>st</sup> of each month. A security deposit of \$750.00 was paid at the beginning of the tenancy sometime in December of 2009.

The Landlord claims that the 10 day notice to end tenancy for unpaid rent was posted on the door on both the front and rear of the rental unit on April 27, 2011. The Tenant confirms receiving the notice, but was unsure of what date it was received. The Landlord claims that the Tenant has not paid rent of \$1,500.00 per month for April and May 2011 and is in arrears for \$900.00 for rent from previous months. The Landlord is also seeking rent of \$1,500.00 for June 2011. As of the date and time of this hearing, the Landlord claims that the Tenant has not made any rent payments. The Tenant confirms in her direct testimony that she did not pay the April and May rent. The Tenant cites issues with emergency repairs that she has paid for and is withholding the rent for this reason to offset those costs which are in dispute with the Landlord. The Tenant confirmed that she did not have permission from the Landlord to withhold the rent nor does she have any order from the Residential Tenancy Branch allowing her to withhold the rent. The Tenant states that as of the date and time of this hearing, June 1, 2011 at

1:00pm that the rent was not yet due and as such the Landlord is premature in her claim as part of the application for dispute.

Neither party has filed any evidence. The Landlord has failed to provide a copy of the 10 day notice to end tenancy for unpaid rent.

### Analysis

Based upon the Tenant's own direct testimony, I am satisfied that she was properly served with the 10 day notice to end tenancy for unpaid rent. The Tenant has not filed an application for dispute resolution nor has she paid the rent within the allowed 5 days. I note that the Landlord filed for dispute resolution 9 days after the notice was posted on the rental unit door and has stated in direct testimony that no rent has been paid as of the date of the hearing nor has he been served with an application for dispute resolution from the Tenant. The Tenant has confirmed not paying any rent. The Tenant is presumed to accept that the Tenancy is at an end. Based on the above facts, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the order of possession. 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.

As for the monetary order, I find that the Landlord has established a claim for \$3,000.00 in unpaid rent for April and May of 2011, based upon the Tenant's direct testimony that she withheld the rent over a dispute for costs associated to emergency repairs. The Tenant does not have permission from the Landlord nor does she have an order from the Residential Tenancy Branch allowing her to withhold the rent. The Landlord's claim for rent arrears of \$900.00 is disputed by the Tenant and is unproven by the Landlord and as such I dismiss this portion of the Landlord's claim. The Landlord's claim for June 2011 rent is premature as the Tenant has stated and as such, I dismiss this portion of the claim with leave to re-apply. I find that the Landlord has been partially successful in her application and find that she is entitled to part of the filing fee. I award \$50.00 for partial recovery of the filing fee. The Landlord has established a total claim of \$3,050.00. I order that the Landlord retain the \$750.00 security deposit in partial satisfaction of her claim and grant an order under section 67 for the balance due of \$2,300.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$2,300.00.  
The Landlord may retain the security deposit.

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: June 01, 2011.

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Residential Tenancy Branch