

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNSD, 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;
- 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 11:10 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 entered into written evidence copies of the following three notices to end this tenancy:

- a 10 Day Notice to End Tenancy for Unpaid Rent posted on the tenant's door on April 4, 2011;
- a second 10 Day Notice to End Tenancy for Unpaid Rent posted on the tenant's door on May 2, 2011; and
- a 1 Month Notice to End Tenancy for Cause for repeated late payment of rent posted on the tenant's door on April 27, 2011.

The landlord also provided written evidence that she sent the tenant a copy of her dispute resolution hearing package by registered mail on May 13, 2011. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served the above 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 award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began as a one-year fixed term tenancy on February 1, 2005, but was subsequently converted to a month-to-month tenancy at the end of the first year. Monthly rent is presently set at \$923.00, payable in advance on the first of each month.

The landlord continues to hold the tenant's \$380.00 security deposit paid on January 1, 2005.

The landlord testified that the tenant has not paid any rent for April, May or June 2011. She said that the tenant has hoarded a lot of material in the rental unit and it is unclear if the tenant has abandoned the rental suite. She provided written evidence of repeated late payment of rent during this tenancy. She asked for an Order of Possession and a monetary award for unpaid rent for the above-noted three months. She asked for permission to retain the tenant's security deposit in partial satisfaction of the monetary award requested and recovery of her filing fee for this application.

### Analysis

#### Order of Possession

The tenant failed to pay the April 2011 rent within five days of receiving the 10 Day Notice to End Tenancy on April 4, 2011. 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 April 17, 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. I also note that the landlord is also eligible to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice to End Tenancy issued on May 2, 2011 and the 1 Month Notice to End Tenancy for Cause.

#### Monetary Award

Based on the undisputed evidence submitted by the landlord, I find that the landlord is entitled to a monetary award for unpaid rent for the months of April, May and June 2011, at a monthly rent of \$923.00.

I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of the above monetary award. I also allow the landlord to recover her filing fee for this application from the tenant.

### 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 issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover three months of unpaid rent and the landlord's filing fee, less the value of the tenant's security deposit plus interest.

<b>Item</b>	<b>Amount</b>
Unpaid April 2011 Rent	\$923.00
Unpaid May 2011 Rent	923.00
Unpaid June 2011 Rent	923.00
Less Security Deposit Plus Interest (\$380.00 + \$13.44)	-393.44
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$2,425.56</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.