

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:41 p.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 provided written and witnessed evidence confirming that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (a 10 Day Notice) on the tenant's door at 4:34 p.m. on May 2, 2011. The landlord also testified that she handed the tenant a copy of her dispute resolution hearing package on May 18, 2011. She testified that the tenant signed a document attesting to her receipt of the hearing package on May 18, 2011. 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 and losses arising out of this tenancy? 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 one year fixed term tenancy commenced on November 1, 2010. Monthly rent is set at \$1,100.00, payable in advance on the first of the month. The landlord continues to hold the tenant's \$550.00 security deposit paid on October 28, 2010.

The landlord testified that she issued the 1 Month Notice when the tenant did not pay her May 2011 rent on time. She applied for a monetary award of \$1,650.00 which was

to compensate the landlord for unpaid rent of \$1,100.00 for each of May and June 2011, \$25.00 for late payment fees for each of these months, and authorization to retain the tenant's security deposit. She testified that she received a rent payment of \$550.00 from the tenant on May 2, 2011, and accepted \$400.00 from the tenant for use and occupancy only on May 13, 2011, \$100.00 for use and occupancy only on May 16, 2011, and \$175.00 for use and occupancy only on May 20, 2011. She asked for a reduced monetary award to reflect the tenant's payments since May 2, 2011 and a two-day Order of Possession.

#### Analysis - Order of Possession

The tenant failed to pay all of the May 2011 rent 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 16, 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.

#### Analysis – Monetary Award

I find that the landlord is entitled to a monetary award for the difference between the \$1,225.00 she has paid the landlord since May 1, 2011 and the \$2,250.00 in rent and late fees owing from May and June 2011. I allow the landlord to retain the tenant's \$550.00 security deposit plus interest in partial satisfaction of this monetary award. No interest is payable over this period. I also allow the landlord to recover the \$50.00 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 Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and losses arising out of this tenancy and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
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May 2011 Rent	\$1,100.00
Late Fee for May 2011 Rent	25.00
May 2, 2011 Rent Payment	-550.00
May 13, 2011 Payment Accepted by Landlord for Use and Occupancy Only	-400.00
May 16, 2011 Payment Accepted by Landlord for Use and Occupancy Only	-100.00
May 20, 2011 Payment Accepted by Landlord for Use and Occupancy Only	-175.00
June 2011 Rent	1,100.00
Late Fee for June 2011 Rent	25.00
Less Security Deposit	-550.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$525.00</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*.