

## **DECISION**

Dispute Codes      OPR, 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 the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:43 p.m. in order to enable them 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 testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door on May 4, 2011. She testified that she sent a copy of the landlord's dispute resolution hearing package to the tenants by registered mail on May 25, 2011. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord has served the above documents 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 tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This month-to-month tenancy commenced on June 1, 2001. Monthly rent is presently \$935.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$387.50 security deposit paid on May 29, 2001.

The landlord issued the 10 Day Notice when the tenants had not paid their \$935.00 May 2011 rent by May 1, 2011. By the time the landlord applied for dispute resolution, the tenants had paid \$467.50 of this amount on May 9, 2011. In the landlord's application for dispute resolution submitted on May 20, 2011, the landlord applied for an Order of Possession and a monetary award of \$467.50, the unpaid portion of the May 2011 rent.

At the hearing, the landlord testified that the landlord received two payments of \$457.03 on May 31, 2011 to look after outstanding rent for May 2011 and payments towards the tenants' June 2011 rent. The landlord also testified that the tenants had made another payment of \$467.50 for June 2011. The landlord provided copies of receipts for all of the above payments which noted that the landlord had accepted the payments for use and occupancy only. She testified that \$20.94 remains owing from May and June 2011.

#### Analysis - Order of Possession

The tenants failed to pay the May 2011 rent within five days of receiving the 10 Day Notice. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 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(s). If the tenants do 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 and Security Deposit

As outlined above, the landlord testified that she has accepted payments for use and occupancy only that look after the \$467.50 identified as owing for May 2011 rent in the landlord's application for dispute resolution. Although there may be additional rent owing for June 2011, that issue was not identified in the landlord's application for dispute resolution. For that reason, I dismiss the landlord's application for recovery of unpaid rent identified in her application for dispute resolution.

Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants. To implement this \$50.00 monetary award, I allow the landlord to retain \$50.00 from the tenants' security deposit. The value of the retained portion of the tenants' security deposit is reduced to \$337.50 plus applicable interest.

#### 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 amount of \$50.00, which is to be deducted from the retained portion of the tenants' security deposit as outlined above.

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*.