

## **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 tenants' 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male tenant (the tenant) confirmed that on May 4, 2011 the landlord handed his wife the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The tenant confirmed that the tenants received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on May 26, 2011. I am satisfied that these documents were served by the landlord in accordance with the *Act*.

At the commencement of the hearing, it became apparent that the landlord had used the wrong name for the male tenant in the application for dispute resolution. At the landlord's request, I amended the male tenant's name on this application to that noted above and on the 10 Day Notice.

### 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 one-year fixed term tenancy commenced on July 23, 2008. When the initial term expired in 2009, this tenancy converted to a month-to-month tenancy. Monthly rent by the end of this tenancy was set at \$749.00, payable in advance on the first of the month. The landlord retains the tenants' \$350.00 security deposit paid on July 23, 2008 plus interest.

The landlord said that he issued the 10 Day Notice when the tenants did not pay their \$749.00 rent for May 2011. The parties agreed that the tenants have not paid any portion of the May or June 2011 rent. The tenant explained that he has had difficulty finding and retaining work and asked for more time to pay the rent and additional time to vacate the rental unit if that is necessary. The landlord asked for a 7-day Order of Possession.

#### 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 15, 2011. As that has not occurred, I find that the landlord is entitled to a 7 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 7 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Analysis – Monetary Order

On the basis of the undisputed evidence presented, I issue a monetary award in the landlord's favour for unpaid rent of \$749.00 for each of May and June 2011. I allow the landlord to retain the tenants' \$350.00 security deposit plus interest in partial satisfaction of this monetary award. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application.

#### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 7 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 the filing fee for this application, less the current value of the security deposit which I allow the landlord to retain.

| <b>Item</b>                                                           | <b>Amount</b>     |
|-----------------------------------------------------------------------|-------------------|
| Unpaid May 2011 Rent                                                  | \$749.00          |
| Unpaid June 2011 Rent                                                 | 749.00            |
| Less Security Deposit plus Interest<br>(\$350.00 + \$2.32 = \$352.32) | -352.32           |
| Recovery of Filing Fee for this application                           | 50.00             |
| <b>Total Monetary Order</b>                                           | <b>\$1,195.68</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*.