

## **DECISION**

Dispute Codes      OPR, MND, 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 for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property 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 his 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. At the commencement of the hearing, the landlord and the female tenant who attended the hearing confirmed that the female tenant vacated the rental unit on May 4, 2011. The landlord testified that he believes that the male tenant continues to reside in the rental unit.

The landlord's witness attested to the landlord's sworn testimony that the landlord handed a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the male tenant on May 20, 2011. The landlord requested an Order of Possession on the basis of the 10 Day Notice. The landlord testified that he handed a copy of his dispute resolution hearing package to both tenants separately on June 2, 2011, witnessed by an individual the female tenant knows. The female tenant confirmed that she received a copy of the dispute resolution hearing package as described by the landlord. I am satisfied that the above documents and the landlord's evidence were provided to the tenants 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 a monetary award for damage arising out of this tenancy? 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 March 15, 2006. Monthly rent is presently set at \$1,000.00, payable in advance on the 15<sup>th</sup> of each month. The parties in attendance agreed that the landlord currently holds a \$100.00 security deposit paid on or about March 15, 2006, plus interest. The parties agreed that a joint move-in condition inspection was conducted when this tenancy commenced.

The landlord applied for a monetary award of \$5,000.00. This amount included the following:

<b>Item</b>	<b>Amount</b>
Unpaid May 2011 Rent	\$1,000.00
Garbage Removal (\$57.00 + \$30.00 labour)	87.00
Building Damage	3,913.00
<b>Total Monetary Award Requested</b>	<b>\$5,000.00</b>

The landlord entered written evidence that he accepted a \$375.00 payment from the male tenant on June 2, 2011 for use and occupancy only. The landlord testified that he has not received any other payment from the tenants since he issued the May 20, 2011 10 Day Notice. The landlord said that the tenants have not paid any portion of the June rent that became due on June 15, 2011.

### Analysis - Order of Possession

The tenants failed to pay the May 2011 rent within five days of receiving the 10 Day Notice to End Tenancy. 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 31, 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 tenant(s) 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

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The

claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that there is undisputed evidence that the tenants have only paid \$375.00 towards the \$1,000.00 in rent that became due on May 15, 2011. I issue a \$625.00 monetary award in the landlord's favour for May 2011 rent, the difference between these two figures. As of June 15, 2011, another \$1,000.00 became due which has not been paid. Since the landlord may be able to rent the premises to another tenant by July 1, 2011, I allow the landlord a monetary award in the amount of \$500.00, one-half month's rent for the period from June 15, 2011 until June 30, 2011. This monetary award compensates the landlord for the loss of rent he will experience for June 2011 because he has been unable to obtain compliance with his 10 Day Notice.

Based on undisputed evidence and receipts provided by the landlord regarding a number of trips to the local garbage transfer station, I am satisfied that the landlord incurred costs to remove the tenants' garbage in March 2011. I allow the landlord a monetary award in the amount of \$57.00 for these trips to the garbage transfer station and \$30.00 for labour for these trips.

The parties in attendance testified that there has been damage to the rental unit, but the current condition of the rental unit was unknown to both of the parties who attended the hearing. Under these circumstances, the landlord was unable to submit estimates or receipts into written evidence. Based on the evidence presented by the parties, I find that the landlord's application for a monetary award for damage is premature as he has not yet been able to assess the extent of the damage to this rental unit while the male tenant remains in the rental unit. For these reasons, I dismiss the remainder of the landlord's application for a monetary award for damage caused during this tenancy with leave to reapply.

I allow the landlord to retain the tenants' \$100.00 security deposit plus interest in partial satisfaction of the monetary award issued to the landlord. As the landlord has been successful in this application, I allow him to recover his \$50.00 filing fee for this application from the tenants.

### 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 due on May 15, 2011 and part of the rent due on June 15, 2011, plus the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Unpaid May 2011 Rent	\$1,000.00
Less Amount Paid for Use and Occupancy Only June 2011	-375.00
Unpaid June 2011 Rent (One-Half Month's Rent from June 15-30, 2011)	500.00
Garbage Removal (\$57.00 + \$30.00 labour)	87.00
Less Security Deposit plus Interest (\$100.00 + \$3.44 = \$103.44)	-103.44
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,158.56</b>

I allow the landlord to retain the tenants' security deposit plus interest in partial satisfaction of this monetary award.

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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*.