

## **Amended Decision**

**Dispute Codes:** OPR, CNR, MNR, MNDC, FF

### **Introduction**

This hearing dealt with 2 applications: i) by the landlord for an order of possession / a monetary order for unpaid rent / and recovery of the filing fee; ii) by the tenants for cancellation of a notice to end tenancy / a monetary order for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act

### **Background and Evidence**

There is no copy of a written tenancy agreement in evidence for this tenancy which began in September 1993. The subject unit is one full half of a side-by-side duplex with an upstairs and a downstairs. The tenants sublet the other half of the duplex which is divided into two separate units: one upstairs and one downstairs. The total combined rent for what are effectively three units is \$3,920.00.

Arising from rent which was not fully paid when due on June 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 6, 2011. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted into evidence, and it documents that \$920.00 remained unpaid on June 1, 2011. The tenants testified that they have subsequently made no further payment toward rent for either June or July, and they continue to reside in the unit.

The tenants argue that the landlord has not undertaken any significant repairs to the unit for many years. In particular they describe leaks in the roof. The landlord testified that the roof was replaced 4 years ago and further, that the tenants refuse to allow him to enter inside in order to confirm the current existence of leaks.

## **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated June 6, 2011. Even while they filed an application to dispute the notice, the tenants did not pay the outstanding rent for June within 5 days of receiving the notice. As previously stated, neither have the tenants made any payment toward rent for July, despite continuing to live in the unit. In the result, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$2,930.00. This is comprised of \$920.00 in unpaid rent for June 2011, as well as \$1,960.00 ( $\$3,920.00 \div 2$ ) for the period presently limited to July 1 to 15, 2011, and the \$50.00 filing fee. The landlord has not applied to retain the security deposit.

As to the tenants' application, I find there is insufficient evidence of any of the following:

- the existence of current leaks in the roof;
- a formal expression of concern by the tenants to the landlord related to leaks in the roof;
- an application by the tenants for a reduction in rent for repairs, services or facilities agreed upon but not provided;
- an application by the tenants for an order instructing the landlord to make repairs to the unit, site or property.

In the result, the tenants' application for compensation for damage or loss under the Act, Regulation or tenancy agreement is hereby dismissed. As the tenants' principal application has failed, their application to recover the filing fee is also hereby dismissed.

## **Conclusion**

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,930.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order 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*.

DATE: July 4, 2011

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Residential Tenancy Branch