

## **Decision**

**Dispute Codes:** OPR, MNR, MNSD, FF

### **Introduction**

This hearing dealt with the landlord's application for an order of possession / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to any or all of the above under the Act

### **Background and Evidence**

There is no written tenancy agreement in evidence for this tenancy which began more than 30 years ago. Monthly pad rent is \$468.00. There is no record of a security deposit having been collected.

Arising from rent which remained overdue on June 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated June 2, 2011. The notice was served by way of delivery to the tenant's mailbox on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant made payments toward rent in the amount of \$100.00 on June 6, and \$493.00 on July 7. The tenant continues to occupy the pad and said she believes that the sale of her manufactured home will be completed by the end of July 2011.

During the hearing the tenant did not dispute the various amounts of rent outstanding for certain months, as set out below.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated June 2,

2011. The tenant did not pay the full amount of overdue rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, 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 \$1,491.00. This is calculated as follows:

\$162.00: overdue for March

\$468.00: overdue for April

\$468.00: overdue for May

\$468.00: overdue for June

\$468.00: overdue for July

\$50.00: filing fee

Total: \$2,084.00

Subtracted from the above amount are payments from the tenant in the total amount of \$593.00 (\$100.00 on June 6, and \$493.00 on July 7), leaving a balance owing to the landlord in the amount of \$1,491.00 (\$2,084.00 - \$593.00).

As there is no record of a security deposit having been collected, the aspect of the landlord's application concerning retention of the security deposit is hereby dismissed.

Further, as there is no record of a written tenancy agreement and, therefore, no formal provision for the assessment of a fee for the late payment of rent, that aspect of the landlord's original application is hereby dismissed. In this regard, section 5 of the Regulation addresses **Non-refundable fees charged by landlord**, and provides in part:

5(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1)(d) unless the tenancy agreement provides for that fee.

## **Conclusion**

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Sunday, July 31, 2011**. This order must be served on the tenant. Should the tenant 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 60 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,491.00**. Should it be necessary, this order may be served on the tenant, 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 11, 2011**

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Residential Tenancy Branch