

## **Decision**

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

### **Introduction**

This hearing was convened in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee. Both parties participated and gave affirmed testimony.

During the hearing the landlord testified that she and the tenant hope to negotiate a schedule for payment of rental arrears. Accordingly, while the landlord still seeks to obtain an order of possession, she requested that it be effective two (2) days after service on the tenant, thus permitting some flexibility for determining the date of a potential end to tenancy.

Further, during the hearing the landlord withdrew the application to recover the fee assessed for late payment of rent where it concerns May.

The landlord's application does not include an application to retain the security deposit.

### **Issues to be decided**

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

### **Background and Evidence**

Pursuant to a written tenancy agreement, the original fixed term of tenancy is from April 1, 2010 to March 31, 2011. Monthly rent of \$820.00 is payable in advance on the first day of each month, and a security deposit of \$410.00 was 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 3, 2010. Subsequently, following certain payments, the parties agree that rent currently overdue is as follows:

\$ 40.00: June

\$820.00: July

The landlord also seeks to recover the \$25.00 fee assessed for the late payment of rent for each of the above 2 months.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent dated June 3, 2011. The tenant acknowledged that he received the notice, and did not dispute the landlord's testimony that the entire amount of rental arrears was not paid within 5 days of his receipt of the notice. Further, the tenant did not file an application to dispute the notice within 5 days of his receipt of it. The tenant is therefore conclusively presumed under section 46(5) of the Act, to have accepted that tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, based on the documentary evidence and testimony of the parties, I find that landlord has established entitlement to a claim of \$960.00. This is comprised of \$860.00 in total unpaid rent (\$40.00 + \$820.00), \$50.00 in total for fees assessed for late payment of rent (2 x \$25.00), in addition to the \$50.00 filing fee.

### **Conclusion**

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenant. 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 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$960.00. 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 20, 2011

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Residential Tenancy Branch