

## **DECISION**

### **Dispute Codes:**

OPC; MNDC; FF

### **Introduction**

This Hearing dealt with the Landlord's application for an Order of Possession; for compensation for damage or loss under the tenancy agreement, regulation or Residential Tenancy Act; and recovery of the filing fee from the Tenant. Both parties appeared at the Hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Landlord served the Tenant with the Notice of Hearing documents, by handing the documents to the Tenant at the rental unit on June 18, 2011.

### **Issue to be Decided**

- Is the Landlord entitled to an Order of Possession based on a One Month Notice to End Tenancy issued June 3, 2011 (the "Notice")?
- Is the Landlord entitled to compensation for damage or loss?

### **Background and Evidence**

The parties were in agreement to the following facts:

- Monthly rent is \$700.00, due on the first day of each month.
- A security deposit in the amount of \$350.00 was required at the beginning of the tenancy. The Tenant initially paid \$50.00 towards the security deposit, but the Landlord returned it to the Tenant because the Tenant needed grocery money.
- The Tenant promised to pay the Landlord the security deposit by May 20, 2011, but to date has not done so.
- The Landlord served the Tenant with the Notice on June 3, 2011, by handing the Notice to the Tenant at the rental unit.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

Tenant has allowed an unreasonable number of occupants in the unit.

Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit or property.

Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The Landlord applied for a Monetary Order in the amount of \$450.00, but during the Hearing she stated that she meant to ask for \$350.00, which is the amount of the unpaid security deposit.

### **Analysis**

Both parties gave testimony that was not relevant to the Landlord's application. Only the relevant testimony is recorded in this Decision.

This is an uncontested Notice. The Tenant did not apply to set it aside within 10 days of receipt of the Notice. The Tenant agreed that she did not pay the security deposit within thirty days of the beginning of the tenancy.

Section 47(1)(a) of the Act states:

#### **Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

Based on the testimony of both parties, I find that the Landlord has established that the Tenant did not pay the security deposit within 30 days of the date it was required to be paid, and therefore the Landlord's application for an Order of Possession is granted. As the Landlord has established cause to end the tenancy for this reason, I made no findings with respect to the other reasons indicated on the Notice.

Further to the provisions of Section 47(2) of the Act, I find that the effective date of the Notice is July 31, 2011. The incorrect date of June 30, 2011, is automatically changed to July 31, 2011, pursuant to the provisions of Section 53(1) of the Act.

A security deposit is held in a form of trust for the Tenant, to be applied in accordance with the provisions of the Act. It does not belong to the Landlord. There is no provision in the Act for compensation in the amount of the security deposit if it is not paid. Therefore, this portion of the Landlord's application is dismissed.

The Landlord has been partially successful in her application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

**Conclusion**

I hereby provide the Landlord an Order of Possession effective **1:00 p.m., July 31, 2011**, for service upon the Tenant. The Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$50.00** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) 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*.

Dated: July 15, 2011.

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