

## **DECISION**

Dispute Codes      OPR, MNR, 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 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant 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. The tenant confirmed that the landlord's male agent at this hearing handed him a 10 Day Notice to End Tenancy for Unpaid Rent (a 10 Day Notice) on June 2, 2011. The tenant confirmed that the landlord's male agent at this hearing handed him a copy of the landlord's dispute resolution hearing package on July 8, 2011. I am satisfied that the landlord's agent served these documents and the landlord's written evidence in accordance with the *Act*.

At the hearing, the landlord's female agent requested that the application for dispute resolution be amended to include an updated request that the monetary award include the amounts that have not been paid for July and August 2011, as well as the original application for June 2011. I allowed the landlord's agent's request to update the amount of the monetary award to include the unpaid rent for these months.

### 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 recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy commenced as a fixed term tenancy on May 17, 2008. After the expiration of the initial term, this converted to a month-to-month tenancy. Monthly rent by September 1, 2010 was \$775.00, payable in advance on the first of the month. The landlord continues to hold the tenant's \$362.50 security deposit paid on May 7, 2008.

The parties agreed that the tenant has not paid any of the \$775.00 in rent or \$25.00 late fee identified as owing in the landlord's 10 Day Notice. The landlord's female agent gave undisputed oral testimony that the tenant has not paid his July or August 2011 rent or late fees.

### Analysis - Order of Possession

There is undisputed evidence that the tenant failed to pay the June 2011 rent within five days of receiving the 10 Day Notice. The tenant has 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 tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 13, 2011. As that has not occurred, I find that the landlord is entitled to an Order of Possession that takes effect on August 8, 2011. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on August 8, 2011, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Analysis – Monetary Award

Based on the undisputed evidence provided by the parties, I find that the landlord is entitled to a monetary award for unpaid rent for June, July and August 2011. As per section 9 of the Residential Tenancy Agreement entered into between the parties for this tenancy and entered into written evidence by the landlord, I also allow the landlord late fees of \$25.00 for each of these months.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

### Conclusion

I provide the landlord with a formal copy of an Order of Possession effective at 1:00 p.m. on August 8, 2011. 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 retain the tenant's security deposit plus interest and to recover unpaid rent, late fees and the landlord's filing fee for this application:

<b>Item</b>	<b>Amount</b>
Unpaid June 2011 Rent	\$775.00
Late Fee June 2011	25.00
Unpaid July 2011 Rent	775.00
Late Fee July 2011	25.00
Unpaid August 2011 Rent	775.00
Late Fee August 2011	25.00
Less Security Deposit plus Interest (\$362.50 + \$3.55 = \$366.05)	-366.05
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$2,083.95</b>

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