

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.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered oral and written evidence that the maintenance manager witnessed her post a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on July 10, 2011. The landlord's maintenance manager testified that he handed the tenant a copy of the landlord's dispute resolution hearing package on July 22, 2011 in the company of a witness. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

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 periodic tenancy commenced on September 1, 2010. Monthly rent was set at \$1,075.00, payable in advance on the 31st of the preceding month. The landlord said that her common practice was to allow the tenant to pay the monthly rent on the first of each month. The landlord continues to hold the tenant's \$537.50 security deposit paid on September 1, 2010.

The landlord applied for an end to this tenancy and an Order of Possession, as well as a monetary award of \$1,575.00. This amount was to reimburse her for \$525.00 in outstanding rent for July 2011 and \$1,075.00 in outstanding rent for August 2011. The landlord and her representatives testified that the tenant paid \$550.00 in rent for July 2011 on July 10, 2011 and said that she would pay the remainder of the rent later. The landlord issued the 10 Day Notice after the landlord did not receive the full rent on July 10. The landlord and her representatives testified that the tenant has not made any further payment since July 10, 2011. They also said that they are concerned that the

tenant's hydro has been disconnected and that she may be dangerously splicing into other hydro sources outside her rental unit.

Analysis - Order of Possession

The tenant failed to pay the remainder of the July 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 23, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. 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 within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Award

Based on the undisputed evidence presented by the landlord and her representatives, I find that the landlord is entitled to a monetary award in the amount of \$525.00 for July 2011 and \$1,075.00 for August 2011.

The landlord testified that she continues to hold the tenant's security deposit of \$537.50 plus interest from September 1, 2010 until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). 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 recover unpaid rent and her filing fee for this application, less the amount of the tenant's security deposit which I allow the landlord to retain;

Item	Amount
Outstanding Rent from July 2011	\$525.00
Unpaid August 2011 Rent	1,075.00
Less Security Deposit	-537.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,112.50

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*.