

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that he served each of the Tenants with a copy of the Notice of Hearing documents and copies of the Landlord's documentary evidence, by registered mail sent July 28, 2011, to the rental unit. The Landlord provided copies of the registered mail receipts in evidence. I am satisfied that both of the Tenants were served pursuant to the provisions of Section 89(1)(c) of the Act.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary award for unpaid rent for July and loss of income for August, 2011?

### **Background and Evidence**

The Landlord's agent gave the following testimony and evidence:

The Landlord provided a copy of the tenancy agreement in evidence, which was signed by the Landlord on June 28, 2011 and by the Tenants on July 2, 2011. This is a one year fixed term tenancy, which commenced on July 1, 2011. Monthly rent is \$780.00,

due the first day of each month. The Tenants paid a security deposit in the amount of \$390.00 on June 28, 2011.

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on July 8, 2011, a copy of which was provided in evidence. The Landlord provided a Certificate of Service which states that he mailed the Notice to the female Tenant by registered mail on July 9, 2011. The Certificate of Service provides the tracking numbers for the registered mail.

The Landlord's agent testified that the envelope containing the Notice was returned to the Landlord "unclaimed", so the Landlord's agent hand delivered a copy of the Notice to the Tenants at the rental unit on July 21, 2011, in the afternoon. He stated that both Tenants were present.

The Landlord's agent requested an Order of Possession and a Monetary Order for unpaid rent and loss of revenue, calculated as follows:

Unpaid rent for July, 2011	\$780.00
Loss of revenue for August, 2011	<u>\$780.00</u>
TOTAL AMOUNT CLAIMED	\$1,560.00

The Tenants gave the following testimony:

The male Tenant testified that he did not receive the Notice in the mail because he did not have a mail key. He testified that he remembered seeing the Landlord's agent on July 21, but could not remember receiving the Notice from the Landlord's agent.

The female Tenant was vague about whether or not, or when, the Tenants were served with the Notice.

The male Tenant testified that they have not paid any rent for the month of July because he had an agreement with the Landlord that they would not have to pay rent for July because the rental unit was so dirty and had mice at the beginning of the tenancy. He stated that the Tenants did not pay rent for August, 2011, because he did not think he had to pay any rent until the outcome of this Hearing.

The Landlord gave the following reply:

The Landlord testified that he did not agree that the Tenants did not have to pay rent for the month of July, 2011. He stated that he lived in the apartment for a month immediately before the Tenants moved in and that the apartment was clean and mouse free. He stated that the Tenants had asked if they could paint the apartment and that he told them they could as long as they did not use bright colours. He also testified that he told the Tenants he would reimburse them for the cost of the paint upon being provided receipts.

**Analysis**

It is important to note that at the beginning of the Hearing, I asked the male Tenant if anyone else would be joining us on his behalf or if the female Tenant would be joining us. He replied that no one else would be attending the conference. At the beginning of the male Tenant's testimony it became apparent that he was speaking softly to someone else and asking that person for details of the tenancy. It was determined that it was the female Tenant who was helping the male Tenant with his answers. I affirmed the female Tenant into the Hearing and she gave testimony which was vague and contradictory to the Landlord's agent's testimony.

After the Tenants' testimony, the male Tenant stated that he was using a cell phone and that the batteries were running out. I explained to him that he was expected to be available for the duration of the teleconference and that if his phone ran out of batteries,

we would continue in the Tenants' absence. The Tenant exited the teleconference shortly thereafter.

Section 90 of the Act deems service by way of registered mail to be affected 5 days after mailing the document, whether or not the recipient chooses to accept delivery. In any event, I accept that the Landlord's agent served the Tenants with the Notice again on July 21, 2011, by handing the document to the male Tenant with the female Tenant present. I find, on the balance of probabilities, that the Landlord's agent served the Tenants in that manner after the registered mail was returned to the Landlord, unclaimed. I find it most likely that the Landlord's agent visited the Tenants with the express purpose of providing them with the Notice.

I do not accept the Tenants' version of events with respect to July's rent. There was no written agreement with the Landlord that they did not have to pay rent for July and in fact the Landlord issued the Notice and served it twice upon the Tenants: once by registered mail and once in person. The Tenants did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on July 31, 2011. The Landlord is entitled to an Order of Possession and I make that Order.

Section 26 of the Act requires Tenants to pay rent when it is due unless the Tenants have a right under the Act to deduct all or a portion of the rent. I find that the Tenants had no such right. Based on the testimony of both parties, the Landlord has established a monetary claim for unpaid rent and loss of revenue for the months of July and August, 2011, in the total amount of \$1,560.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

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

The Landlord has established a monetary claim as follows:

Un paid rent and loss of revenue	\$1,560.00
Subtotal	\$1,610.00
Less security deposit	- \$390.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$1,220.00</b>

### **Conclusion**

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This 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 **\$1,220.00** against the Tenants. This Order may be filed in the Provincial Court of British Columbia (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: August 29, 2011.

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Residential Tenancy Branch