

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC, MNSD and FF

### **Introduction**

By application of July 12, 2011, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on July 2, 2011 and a Monetary Order for the unpaid rent and filing fee and authorization to retain the security deposit in set off against the balance.

### **Issues to be Decided**

This dispute requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as claimed.

### **Background and Evidence**

This tenancy began on August 1, 2009. Rent is \$1,341.60 per month and the landlord holds a security deposit of \$650 paid on or about August 1, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of July 4, 2011 had been served after the tenant had failed to pay the full rent due on June 1, 2011 and the rent due on July 1, 2011. In the interim the landlord stated that the rent due August 1, 2011 had not been paid.

As a matter of note, the landlord initially claimed a rent shortfall of \$191.60 for the June rent, but amended her application on July 28, 2011 to raise that claim to the full month's rent of \$1,341.60.

The tenant concurred that she has not paid any of the rent for July or August 2011 and stated that she paid only \$1,050 of the rent for June 2011 and the \$191.60 shortfall remains unpaid.

The landlord stated that she had two deposits for June for \$1,050 and had been unable to satisfy herself for certain whether one of them was from the subject tenant and therefore increased her claim for June. However, the landlord has submitted no documentary evidence that would disprove the tenant's claim that one of the \$1,050 payments was hers. The landlord stated that matters had been somewhat confused by the tenant's repeated late payment of rent and submitted copies of Notice to End Tenancy for unpaid rent from April, May, June and July to illustrate the point.

## **Analysis**

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any alleged non-compliance of the landlord with the legislation or rental agreement, for which other remedies are available.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not make application and concurs that the rent that resulted in the Notice to End tenancy of July 4, 2011 remains unpaid.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was July 14, 2011. Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent.

However, as to the question of the amount paid for June 2011, given the tenant's candor on the unpaid rent for July and August, and given that the landlord has submitted no corroborating evidence of the claim amendment from \$191.60 to \$1,341.60, I find for the tenant on the question and award the smaller amount.

As the application has succeeded on its merits I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant.

As authorized under section 72 of the *Act*, I hereby order that the landlord may retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

June 2011 rent shortfall	\$ 191.60
July 2011 rent	1,341.60
August 2011 rent	1,341.60
Filing fee	<u>50.00</u>
Sub total	\$2,924.80
Less retain security deposit (No interest due)	<u>- 650.00</u>
<b>TOTAL</b>	<b>\$2,274.80</b>

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for \$2,274.80, enforceable through the Provincial Court of British Columbia, for service on the tenant.

August 10, 2011