

## **DECISION**

Dispute Codes      OPR, 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 2:43 p.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. Landlord SR testified that she handed a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the male tenant on July 20, 2011. She entered into written evidence a witnessed Proof of Service document attesting to this direct service of the 10 Day Notice to the male tenant. Landlord SR also entered oral testimony and a sworn affidavit attesting to the fact that she handed the male tenant a copy of the dispute resolution hearing package on August 8, 2011. I am satisfied that the landlord served these documents in accordance with the *Act*.

At the hearing, the landlord asked to correct the name of one of the tenants to reflect the information contained on the Residential Tenancy Agreement. I agreed to this correction as outlined above.

At the commencement of the hearing, I clarified the landlord's intentions in the application for dispute resolution. The landlord had entered information in the Details of the Dispute section of the application form regarding unpaid rent of \$3,699.00 as of July 31, 2011. The landlord had not made any notation in the Monetary Order section that would indicate it was the landlord's intention to include an application for a Monetary Order or an amount of the Monetary Order sought in this application. The landlords confirmed that they were not seeking a Monetary Order in this application. The landlord remains at liberty to submit a separate application for a Monetary Order at some later date.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This periodic tenancy for a rent geared to income rental unit commenced on October 1, 2007. Monthly rent is set at \$714.00, payable in advance on the first of each month. No security deposit was paid or is held by the landlord.

The landlord applied for an end to this tenancy and an Order of Possession when the tenants did not pay all of the \$3,699.00 identified as owing in the 10 Day Notice.

### Analysis

Based on the undisputed evidence presented by the landlord, I find that the tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have 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 tenants' 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 tenants to vacate the premises by July 30, 2011. As that has not occurred, I find that the landlord is entitled to an Order of Possession. Although the landlord could obtain a 2-day Order of Possession, the landlord agreed to allow the tenants until September 28, 2011 to vacate the rental unit. The landlord will be given a formal Order of Possession which must be served on the tenants.

### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on September 28, 2011. Should the tenant(s) fail to comply with this Order and vacate the rental unit by that time and date, 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 amount of \$50.00 to allow the landlord to recover the filing fee for this application from the tenant(s). The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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*.