

## **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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:10 p.m. in order to enable them 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 testified that she handed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to Tenant EJM on July 27, 2011. The landlord provided written evidence to confirm that she sent the tenants copies of the landlord's dispute resolution hearing package by registered mail on August 10, 2011. She provided copies of Canada Post Tracking Numbers and Customer Receipts to confirm this mailing. I am satisfied that the landlord served these documents to the tenants 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 tenants?

### Background and Evidence

This periodic tenancy commenced on September 1, 2008. Monthly rent is set at \$680.00, payable in advance on the first of each month. The landlord said that she continues to hold the tenants' \$330.00 security deposit paid on or about September 1, 2008.

The landlord said that she received \$400.00 in payment of outstanding rent from the tenants on July 4, 2011. As \$375.00 in rent remained outstanding as of July 27, 2011, the landlord issued the 10 Day Notice to the tenants. The landlord said that the tenants have not paid any of the \$375.00 identified as owing in the 10 Day Notice. The landlord testified that the tenants have not paid any further rent since she issued the 10 Day Notice. The landlord asked for an end to this tenancy and an Order of Possession. She also requested that consideration be given to increasing the amount of the monetary

award to include the \$680.00 owing for each of the months of August and September 2011.

#### Analysis - Order of Possession

Based on the undisputed evidence presented by the landlord, I find that the tenants failed to pay all of the outstanding rent identified as owing in the 10 Day Notice 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 this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by August 9, 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 tenants. If the tenants do 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

I find that the landlord is entitled to a monetary award for unpaid rent of \$375.00 outstanding as of July 27, 2011, \$680.00 for August 2011 and \$680.00 for September 2011.

Although the landlord's application does not seek to retain the tenants' 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. No interest is payable over this period.

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 the filing fee for this application less the retained value of the tenants' security deposit the landlord is allowed to keep.

Item	Amount
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Outstanding Rent as of July 27, 2011	\$375.00
Unpaid August 2011 Rent	680.00
Unpaid September 2011 Rent	680.00
Less Security Deposit	-330.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,455.00</b>

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*.