

## **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 his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:59 p.m. in order to enable him 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 his agent sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on August 2, 2011. He provided a copy of the Canada Post Tracking Number and testified that the tenant picked up this registered mail. The landlord testified that his agent sent the tenant a copy of the dispute resolution hearing package on August 29, 2011. He provided a copy of the Canada Post Tracking Number for this mailing and for the subsequent registered mailings of the landlord's written evidence. 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

The landlord provided undisputed written and oral evidence that this two-year fixed term tenancy commenced on August 1, 2010. Monthly rent until January 1, 2011 was set at \$1,850.00, payable in advance on the first of each month. As of January 1, 2011, the monthly rent increased to \$2,000.00, payable in advance on the first. The tenant was responsible for paying utilities.

Although the tenant provided a \$1,000.00 cheque for a security deposit, the landlord gave undisputed oral testimony that this cheque was not negotiable. He said that he does not hold any security deposit for this tenancy.

The landlord originally applied for a monetary award of \$10,660.00. He provided written evidence of his amendment to this application raising the requested amount of the monetary award to \$14,650.00. He provided evidence that he sent a copy of the amended application to the tenant by registered mail on September 19, 2011.

The landlord entered into written evidence documents that outlined the history of the tenant's rent payments since this tenancy commenced. This evidence indicated that from the beginning of this tenancy until September 1, 2011, the total rent amount charged was \$27,250.00. He provided written evidence that until the time of his amended application, the tenant had paid a total of \$12,600.00 in rent. The landlord testified that the tenant forwarded him an email payment of \$1,000.00 on or about September 23, 2011. He confirmed that this payment was made available to him for placement into the landlord's banking account by direct deposit. The landlord testified that he has attempted to contact the tenant by email and by other methods, but has had no contact from the tenant other than the recent \$1,000.00 payment forwarded by the tenant shortly before this hearing.

#### Analysis – Order of Possession

The tenant failed to pay the outstanding rent identified as owing 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by August 19, 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 Order

Based on the undisputed oral and written evidence presented by the landlord, I find that the landlord is entitled to a monetary award for unpaid rent arising out of this tenancy. I accept the landlord's evidence indicating that the tenant has paid a total of \$13,600.00 of the \$27,250.00 in rent owing from August 2010 until the end of September 2011. This results in a monetary award in the landlord's favour in the amount of \$13,650.00 for unpaid rent over this tenancy.

Since the landlord has been successful in his application, I also allow the landlord to recover his \$100.00 filing fee for this application from the tenant.

### 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 amount of \$13,750.00 for unpaid rent and for recovery of the landlord's filing fee for his application.

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*.