

## **DECISION**

**Dispute Codes:** OPR; MNR; MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent, late fees and loss of revenue; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that she served the Tenant with the Notice of Hearing documents and copies of the Landlord's documentary evidence by posting the documents to the Tenant's door on August 16, 2011. The Tenant acknowledged that he received the documents on August 16, 2011.

The Landlord is warned that an application for an Order of Possession may be served by posting the application on the Tenant's door, pursuant to the provisions of Section 89(2) of the Act but **an application for a Monetary Order may not be served in this manner**. If the Landlord's application includes a request for a Monetary Order, the application must be served in accordance with the provisions of Section 89(1) of the Act. In this case, however, the Tenant has acknowledged receipt of the Landlord's application and therefore **I find that the application for a Monetary Order was sufficiently given** to the Tenant for the purposes of the Act in accordance with the provisions of Section 71(2)(c) of the Act.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent , late fees and loss of revenue?

### **Background and Evidence**

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

The Landlord provided a copy of the tenancy agreement in evidence. This tenancy began on October 1, 1999. Monthly rent at the beginning of the tenancy was \$600.00,

due on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00 at the beginning of the tenancy.

The Landlord's agent testified that on August 2, 2011, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting the Notice on the Tenant's door at the rental unit. A copy of the Notice was provided in evidence. The Landlord's agent testified that, effective the date the Notice was issued, the Tenant owed \$270.00 in unpaid rent for the month of July, 2011 and \$810.00 in unpaid rent for the month of August, 2011.

The Landlord's agent testified that since the Notice was issued the Ministry has made the following payments:

\$405.00 paid August 13, 2011  
\$405.00 paid September 13, 2011

The Landlord's agent testified that she provided the Tenant with receipts for these payments, indicating that the money was accepted for "use and occupancy only".

The Landlord's agent seeks late fees in the amount of \$20.00 for the months of July, August and September. She seeks a monetary award, calculated as follows:

Outstanding rent for July	\$270.00
Outstanding rent for August (\$810.00 - \$405.00)	\$405.00
Loss of revenue for September (\$810.00 - \$405.00)	\$405.00
Late fees (\$20.00 x 3 months)	<u>\$60.00</u>
Total	\$1,140.00

The Tenant gave the following testimony:

The Tenant testified that monthly rent was only \$745.00, and stated that he had receipts for rent paid in April and May, 2011, in that amount. The Tenant did not provide copies of the receipts in evidence.

The Tenant testified that he received the Notice on August 2, 2011. The Tenant did not dispute that he owes rent, but stated that the amount he owes for unpaid rent is calculated as follows:

Outstanding rent for July	\$140.00
Outstanding rent for August	\$340.00
Outstanding rent for September	<u>\$340.00</u>

Total

\$820.00

The Tenant testified that his wife recently passed away and he had trouble paying the rent, but that his brother-in-law was interested in moving into the rental suite effective October 1, 2011, and that he could pay the arrears soon.

The Landlord gave the following reply:

The Landlord's agent testified that there was a yearly rent increase in February, 2011 and the Tenant is mistaken about the amount of rent for the rental unit.

The Landlord's agent asked for an Order of Possession and a Monetary Order and indicated that she was prepared to sit down with the Tenant and discuss the possibility of entering into a new tenancy agreement with the Tenant and his brother-in-law.

### **Analysis**

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on August 2, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to the provisions of Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on August 15, 2011. I find that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

This is the Landlord's application and the onus is on the Landlord to prove its monetary claim. The Landlord did not provide copies of Notices of Rent Increases or a copy of the Tenant Ledger to support its position that current monthly rent is \$810.00 or that rent outstanding as at July 1, 2011, was \$270.00. The Tenant attested that the current monthly rent is \$745.00, and that he owed \$140.00 for July rent. In the absence of proof that the rent is \$810.00 or that \$270.00 was owed for July rent, based on the testimony of both parties the Landlord's agent has established a monetary claim for unpaid rent and loss of rent for the months of July, August, and September, 2011, in the total amount of **\$820.00.**

The Landlord seeks late fees in the total amount of \$60.00. The tenancy ended on August 15, 2011, and therefore the Landlord is not entitled to fees for late payment of **rent** for the month of September, 2011. The monetary award for the month of September is for loss of revenue, not for unpaid rent. There is a clause in the tenancy

agreement that allows for late fees in the amount of \$20.00, and therefore I grant this portion of the Landlord's claim in the amount of **\$40.00**.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit and accrued interest towards partial satisfaction of the Landlord's monetary claim. Interest has accrued on the security deposit in the amount of \$28.21.

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

I find that the Landlord has established a monetary award, calculated as follows:

Unpaid rent and loss of rent	\$820.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$910.00
Less security deposit and accrued interest	<u>- \$328.21</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$581.79</b>

### **Conclusion**

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. 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 **\$581.79** against the Tenant. 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: September 16, 2011.

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Residential Tenancy Branch