

## **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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for his application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:48 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. He testified that he handed the tenant a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on September 5, 2011. He also testified that he handed the tenant a copy of his dispute resolution hearing package on September 14, 2011. 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

This one-year fixed term tenancy commenced on October 1, 2010. According to the terms of the residential tenancy agreement entered into written evidence, the tenancy was to continue as a month-to-month tenancy after September 20, 2011. Monthly rent is set at \$800.00. The landlord continues to hold the tenant's \$400.00 security deposit paid on October 1, 2010.

The landlord testified that he has not received any of the \$3,105.00 identified as owing in the 10 Day Notice. The landlord applied for a monetary award of \$3,105.00, and requested an additional monetary award for unpaid rent for October 2011, as the tenant has overheld the rental premises beyond the September 15, 2011 effective date of the 10 Day Notice.

Analysis – Order of Possession

The tenant failed to pay any portion of the \$3,105.00 identified as unpaid rent on the 10 Day Notice 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 this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 15, 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 Award

At the hearing, the landlord provided oral testimony to support his claim for a monetary award. He testified that there has been outstanding rent arising from this tenancy for some time. He said that as of May 1, 2011, the tenant owed \$1,725.00 in unpaid rent. He testified that the tenant paid \$950.00 towards her rental arrears in May 2011 reducing the outstanding rent to \$775.00 by the end of May 2011. By June 1, 2011, this outstanding rent had increased to \$1,575.00. The landlord testified that the tenant paid \$155.00 on June 23, 2011. By July 1, 2011, \$2,220.00 was owed by the tenant. The landlord said that the tenant paid \$300.00 in rent on July 9, 2011. The landlord testified that \$2,720.00 was owing as of August 1, 2011 and \$3,520.00 was owing by September 1, 2011.

Based on the evidence provided, I am satisfied that the landlord is eligible to receive the \$3,105.00 monetary award he applied for in his September 14, 2011 application for dispute resolution plus \$800.00 in unpaid rent for October 2011. As such, I issue a monetary award in the landlord's favour in the amount of \$3,905.00 for unpaid rent arising out of this tenancy.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$400.00 security deposit 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 his filing fee for this application and to retain the tenant's security deposit.

<b>Item</b>	<b>Amount</b>
Unpaid Rent Sought in Landlord's Application for Dispute Resolution	\$3,105.00
Unpaid October 2011 Rent	800.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$3,555.00</b>

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*.