

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:43 a.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 a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenants' door on September 4, 2011. The landlord entered written evidence that she sent a copy of the landlord's dispute resolution hearing package to the tenants by registered mail on September 15, 2011. She provided a copy of the Canada Post Tracking Numbers to confirm these mailings. 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 and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This fixed term tenancy commencing on December 15, 2010 is scheduled to end on December 31, 2011. Monthly rent is set at \$695.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$347.50 security deposit paid on December 11, 2010.

The landlord testified that she issued the 10 Day Notice when the tenants did not pay \$667.00 of their September 2011 rent. She testified that the tenants have not made any

further payments since the 10 Day Notice was issued to them. The landlord applied for a monetary award of \$1,412.00 on the basis of a rent ledger the landlord entered into written evidence. The landlord's request for a monetary award covered the following items:

<b>Item</b>	<b>Amount</b>
Rent Owing from September 2011	\$667.00
September 2011 Late Fee	25.00
Unpaid October 2011 Rent	695.00
October 2011 Late Fee	25.00
<b>Total Monetary Award Requested</b>	<b>\$1,412.00</b>

The landlord also requested recovery of the \$50.00 filing fee for this application and authorization to retain the tenants' security deposit in partial satisfaction of the monetary award requested.

#### Analysis – Order of Possession

The tenants failed to pay any portion of the outstanding amount owing identified in the 10 Day Notice within five days of receiving that 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 September 17, 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(s). 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 Order

I find that the landlord is entitled to a monetary award of \$667.00 for outstanding rent from September 2011, \$695.00 for unpaid rent for October 2011, and two late fees of \$25.00 each for those two months. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period.

#### 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, losses arising from this tenancy and the filing fee for this application and to retain the tenants' security deposit.

<b>Item</b>	<b>Amount</b>
Rent Owing from September 2011	\$667.00
September 2011 Late Fee	25.00
Unpaid October 2011 Rent	695.00
October 2011 Late Fee	25.00
Less Security Deposit	-347.50
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,114.50</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*.