

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent - Section 67.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

On September 22, 2011, the Parties entered into an “Offer to Purchase Agreement with Rent-To-Own Conditions” (the “Agreement”). The Agreement provides for bimonthly payments of \$550.00 to be applied evenly towards both the purchase price at closing and towards the down payment. The Agreement also provides that if the buyer defaults, all payments made revert to rent only payments and any money paid in connection with the property or towards the purchase of the property is forfeited. Further upon default, the Agreement provides that the Buyer reverts to a tenant and both Parties are bound by “BC Landlord/Tenant regulations”.

The Parties agree that no bimonthly payments have been made for April, May, June and July 2012. On June 20, 2012, the Landlord served the Tenant by registered mail with a 10 Day Notice for Unpaid Rent with an effective date of June 30, 2012. The Landlord requests an Order of Possession and claims \$4,400.00 in unpaid rent

calculated as four (4) biweekly payments of \$550.00. The Tenant has not moved out of the unit but states that they are in the process of moving out. The Tenant does not dispute the amount claimed by the Landlord.

### Analysis

Given the provisions of the Agreement, I find that the Parties have agreed that upon default of payments, the Parties in essence come under the jurisdiction of the Act. Based on undisputed evidence, I find that the Tenant defaulted on the terms of the Agreement and that the Act therefore applies to the dispute as contained in the Landlord's application.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on undisputed evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$4,400.00** in unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$4,450.00**.

### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for **\$4,450.00**. If necessary, this order may be filed in the Small Claims Court 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: July 30, 2012.

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Residential Tenancy Branch