

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNDC, FF

### 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;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damage to the unit – Section 67;
4. A Monetary Order for compensation– Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

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

Both Tenants share a basement unit with the Landlord who sublet a bedroom to each Tenant. The tenancy with the first named Tenant (“Tenant A”) began on August 1, 2011. Rent in the amount of \$400.00 is payable in advance on the first day of each month. The Landlord states that no security deposit was taken at the onset of this tenancy. Tenant A states that \$175.00 was provided to the Landlord. It is noted that following a whispered prompt of “half a month’s rent” by Tenant A’s support person to Tenant A, the Tenant restated the security deposit taken to be \$200.00.

The tenancy with the second named Tenant ("Tenant B") began on a different date with different rent than Tenant A and with a paid security deposit. No evidence was provided in relation to service of the application and notice of hearing on Tenant B.

Tenant A failed to pay rent for July 2012 and owes \$50.00 in rental arrears. On July 4, 2012, the Landlord personally served Tenant A with a notice to end tenancy for non-payment of rent. Tenant A did not file an Application for Dispute Resolution. The Landlord claims \$450.00 from Tenant A.

### Analysis

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 the Landlord's evidence I find that Tenant A was served with a notice to end tenancy for non-payment of rent and I find the notices to be valid. Tenant A 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 in relation to Tenant A**.

I also find that the Landlord has established a monetary claim for **\$450.00** in unpaid rent from Tenant A. Given the change in the amount of security deposit stated by Tenant A and considering that the Landlord's evidence on this point has a ring of truth, I find that Tenant A did not pay a security deposit.

As Tenant A and Tenant B have different tenancy arrangements, I find that they each have separate tenancy agreements. As these Tenants have separate claims against them from the Landlord and as no evidence of service was provided in relation to Tenant B, I dismiss the Landlord's application in relation to Tenant B with leave to reapply. As the Landlord has been successful with its application, I find that the

Landlord is also entitled to recovery of the \$50.00 filing for a total entitlement of **\$500.00** (450.00 + 50.00) from Tenant A.

As Tenant A has not yet moved out of the unit, there is still time for the Tenant to leave the unit reasonably clean and undamaged as required under the Act and I find the Landlord's claim for damages to the unit to be premature. I therefore dismiss this part of the claim with leave to reapply.

#### Conclusion

**I grant** an Order of Possession to the Landlord. Tenant A must be served with this **Order of Possession**. Should Tenant A 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 and order under Section 67 of the Act for **\$500.00 from Tenant A**. 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 31, 2012.

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Residential Tenancy Branch