

## **DECISION**

Dispute Codes      OPB, MNR, MNSD, FF

### Introduction

This is an application filed by the Landlord for an order of possession because the Tenant has breached an agreement with the Landlord, a monetary order request for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord has submitted documentary evidence package consisting of a copy of an signed agreement to end the tenancy by the Tenants. The Tenants have filed no documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing and evidence packages, I am satisfied that both parties have been properly served.

At the beginning of the hearing, the Tenant made a request for an adjournment as the Tenant, A.V. who is the primary spokesperson was visiting a sick relative in Kelowna and would be returning the next day. The Landlord disputes this stating that she heard that the Tenant, A.V. was not in Kelowna, but in jail. Through discussions with both parties, it was learned that neither party had any further evidence to provide in relation to this hearing. As such, the Tenant's request to adjourn this hearing is denied as I find that a delay would be prejudicial to the Landlord. The hearing shall proceed.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

### Background and Evidence

Both parties agreed that there was no signed tenancy agreement. The Landlord states that the monthly rent is \$525.00. The Tenant disputes this stating that the monthly rent

is \$500.00. Neither party provided any details of the security deposit. Both parties also agree that the Tenants currently reside and have possession of the rental unit.

The Landlord seeks an order of possession because the Tenant has breached an agreement with the Landlord. The Landlord has submitted a signed letter dated September 13, 2012 by both Tenants that states that they will vacated the rental unit on October 1, 2012. The Tenant disputes that this agreement was signed by her.

The Landlord also seeks a monetary order for \$525.00 for unpaid rent. The Landlord claims that the Tenant has failed to pay rent for October 2012. The Landlord stated in her direct testimony that she has not served any notices to end tenancy for unpaid rent.

### Analysis

During the hearing it was explained to both parties that the onus or burden of proof is on the party making the claim, in this case both parties are responsible as they have each made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find on a balance of probabilities based upon the submitted letter signed by the Tenants that the Landlord has established a claim that the parties entered into an agreement to end the tenancy on October 1, 2012. The Landlord is entitled to an order of possession. The Tenants must be served with the order of possession. Should the Tenants 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.

As for the monetary order request, I find that the Landlord has failed to provide sufficient evidence. The rent amount is in dispute and no evidence on the security deposit has been provided. I find with equally conflicting testimony of both parties that the Landlord has failed to establish a claim for unpaid rent or to retain the security deposit. The Landlord's monetary claim is dismissed.

As the Landlord has been partially successful in her application, I grant a monetary order for recovery of \$25.00 of her filing fee.

Conclusion

The Landlord is granted an order of possession.  
The Landlord is granted a monetary order for \$25.00.

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: November 06, 2012.

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Residential Tenancy Branch