

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF, CNR, OLC

### Introduction

There are applications filed by both parties. The Landlord has filed an application for an order of possession and a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has filed an application for an order cancelling the notice to end tenancy issued for unpaid rent or utilities, an order for the Landlord to comply with the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing and evidence packages submitted by the other party, I am satisfied that both have been properly served.

### 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?

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Tenant entitled to an order for the Landlord to comply with the Act?

### Background, Evidence and Analysis

This Tenancy began on March 15, 2012 on a fixed term tenancy ending on March 31, 2012 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$890.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$445.00 was paid.

The Landlord seeks an order of possession and a monetary order for \$3,800.00. This consists of partial unpaid rent for July 2012 of \$240.00, \$3,460.00 of unpaid rent for August, September, October and November of 2012 (@ \$890.00 per month).

The Tenant states that he does not dispute the Landlord's claim and is in agreement over the rent arrears because he has been ill. The Tenant only disputes the Landlord's claim for the security deposit of \$445.00 as 2 weeks rent owed in lieu of work performed.

I find that the Landlord has established a claim for an order of possession and a monetary order for unpaid rent as the Tenant has confirmed the Landlord's claim in his direct testimony. The Tenant's application is dismissed.

The Landlord's claim for the \$445.00 security deposit as compensation for 2 weeks of rent in lieu of work agreed upon is dismissed. Based upon the undisputed facts, I find that the Landlord is entitled to an order of possession. The Landlord is granted an order of possession. The Tenant must be served with the 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.

The Landlord has made a claim against the security deposit, but at the time of the hearing is unsure if the Tenancy shall continue. Section 38 (3) of the Residential Tenancy Act states,

A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid

As for the monetary order, I find that the Landlord has established a claim for \$3,800.00 in rent arrears based upon the undisputed testimony. The Landlord is also entitled to recovery of the \$50.00 filing fee. I grant the Landlord an order under section 67 for the balance due of \$3,850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord is granted an order of possession and a monetary order for \$3,850.00.

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 26, 2012.

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Residential Tenancy Branch