

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, MT, CNR, DRI, O, SS

### Introduction

There are applications filed by both parties. The Landlord has made an application for an order of possession and a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has made an application for more time to be allowed to make an application to cancel a notice to end tenancy, to cancel a notice to end tenancy issued for unpaid rent or utilities, to dispute an additional rent increase, an order for the Landlord to comply with the Act and to serve documents in a different way than required by the Act.

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, I am satisfied that both parties have been properly served. The Tenant has not submitted any documentary evidence. The Landlord has submitted a copy of the 10 day notice to end tenancy for unpaid rent and a dishonoured rent cheque.

At the beginning of the hearing it was clarified with both parties that the Tenant's application for more time (MT), dispute an additional rent increase (DRI), an order for the Landlord to comply (O) and substitutional service (SS) are withdrawn as they were made in error.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

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

### Background, Evidence and Analysis

The Landlord states that the Tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated October 25, 2012 after receiving the rent cheque returned by the bank as "item dishonoured". The Tenant stated that she accidentally cancelled the cheque. The Landlord's notice states that rent of \$1,200.00 was unpaid that was due on October 15, 2012. The Tenant has acknowledged that no rent has been paid

since as she states that she tried to pay the rent in cash and then with another cheque, but that the Landlord refused to accept it. The Landlord disputes this claim stating no attempts at paying the rent were made by the Tenants. The effective date of the notice is stated as October 25, 2012.

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 that with the Tenant's claim that the Landlord was refusing rent payment has been disputed and unsupported that the Tenant's claim is dismissed. The Landlord's claim is supported by the 10 day notice to end tenancy for unpaid rent and is also supported by the rent cheque which the Tenant has acknowledged cancelling. Both parties confirmed that no rent payments have been received by the Landlord since issuing the 10 day notice dated October 25, 2012. I find on a balance of probabilities that the Landlord has established a claim for an order of possession and a monetary order for unpaid rent. However the Landlord's effective date of the is corrected from October 25, 2012 to November 5, 2012. The Landlord is granted an order of possession. The Tenant must be served with 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.

As for the monetary claim, I find that the Landlord has established a claim for unpaid rent of \$2,400.00 consisting of unpaid rent of \$1,200.00 for October and November 2012. The Landlord's claim for a \$25.00 late fee is dismissed as no evidence was submitted to support this claim. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$1,200.00 in combined pet damage and security deposits in partial satisfaction of the claim and I grant the Landlord a monetary order

under section 67 for the balance due of \$1,250.00. 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 \$1,250.00. The Landlord may retain the \$1,200.00 in combined pet damage and security deposits.

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: December 04, 2012.

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Residential Tenancy Branch