

## **DECISION**

**Dispute Codes:** OPR; OPB; MNR; MNSD; FF; O

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord's agents gave affirmed testimony at the Hearing.

The Landlord's agents testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant, via registered mail, to the rental unit on November 20, 2012. The Landlord provided a copy of the registered mail receipt and tracking numbers in evidence.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents and documentary evidence by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

The Landlord's agents provided the following testimony and documentary evidence:

A copy of the tenancy agreement was provided in evidence. Monthly rent is \$950.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00 at the beginning of the tenancy.

On November 5, 2012, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit. The Tenant has not disputed the Notice and remains in the rental unit.

The Landlord' agent requested a monetary award calculated as follows:

Unpaid rent for November, 2012	\$950.00
Loss of revenue for December, 2012	\$950.00

Late fee for November, 2012	\$25.00
Late fee for December, 2012	<u>\$25.00</u>
TOTAL	\$1,950.00

### **Analysis**

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on November 5, 2012. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on November 18, 2012. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

Based on the undisputed testimony of the Landlord's agents, I find that the Landlord has established a monetary claim for unpaid rent and loss of revenue in the total amount of **\$1,900.00.**

The tenancy agreement contains a clause providing for late fees for unpaid rent in the amount of **\$25.00.** I find that the Landlord is entitled to late fees for the month of November but not for the month of December, as the award for December is for loss of revenue and not unpaid rent.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order for service upon the Tenant, calculated as follows:

Unpaid rent and loss of revenue	\$1,900.00
Late fee for November, 2012	\$25.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,975.00
Less security deposit	<u>- \$475.00</u>

TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,500.00
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### **Conclusion**

I hereby grant the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of **\$1,500.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 19, 2012.

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Residential Tenancy Branch