



## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This participatory hearing was convened after the issuance of a March 7, 2017 Interim Decision of Adjudicator J. Doyon. Adjudicator Doyon determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord, M.S.S. attended the hearing, while the tenants did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted handed to the tenants on February 22, 2017. The tenant called witness K.H. to provide testimony confirming this fact. Pursuant to sections 88 and 90 of the *Act*, I find that the tenants were served with this 10 Day Notice on February 22, 2017.

On March 13, 2017, tenants were sent a Notice of Hearing by way of Registered Mail. The landlord provided a copy of the Canada Post tracking number to the hearing. Pursuant to sections 88 and 90 of the *Act*, the tenants were served on March 18, 2017 with the Notice of Hearing.

At the outset of the hearing the landlord asked to amend his application to reflect unpaid rent of \$1,800.00 for March and April 2017. As the tenant continues to occupy the rental unit, I will amend the landlord's application under the powers delegated to me by section 64 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The tenancy in question began on July 1, 2016. This was a month to month tenancy with rent set at \$900.00 per month. A security deposit of \$450.00 continues to be held by the landlord.

The landlord gave testimony that his application for Direct Request was reconvened to a participatory hearing because “the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*.”

The landlord explained that he handed the tenants a copy of the 10 Day Notice on February 22, 2017. The landlord called witness R.K. to provide sworn testimony that he was present when the tenants were served with this document.

The landlord has applied for an Order of Possession and an amended Monetary Order reflecting unpaid rent for the months of February, March and April 2017. The landlord testified that the tenants continue to occupy the rental unit.

### Analysis – Order of Possession

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants’ failure to take either of these actions within five days has led to the end of her tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by March 3, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants.

### Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to their claim for a monetary award.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$2,700.00 for unpaid rent. The landlord testified that rent has not been paid for February, March and April 2017. In his Direct Request the landlord sought to collect \$534.32 for unpaid utilities. The landlord was unable to provide any evidence that he provided the tenant with a written demand letter for the utilities as required by section 46(6)(b) of the *Act*.

Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants \$450.00 security deposit in partial satisfaction of the Monetary Award.

### Conclusion

**I grant the landlord an Order of Possession to be effective two days after notice is served to the tenants.** If the tenants do not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

**I make a Monetary Order of \$2,250.00 in favour of the landlord as follows:**

| Item                          | Amount            |
|-------------------------------|-------------------|
| Unpaid Rent for February 2017 | \$1,700.00        |
| Unpaid Rent for March 2017    | 1,700.00          |
| Unpaid Rent for April 2017    | 1,700.00          |
| Less Security Deposit         | (-450.00)         |
|                               |                   |
| <b>Total Monetary Order</b>   | <b>\$2,250.00</b> |

The landlord is provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: April 7, 2017

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Residential Tenancy Branch