

## **DECISION AND REASONS**

**Dispute Codes:** OP, MNR, MNSD, FF

### **Introduction**

This hearing dealt with joint applications filed by the landlord and by the tenant pursuant to the *Residential Tenancy Act*.

The landlord seeks:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55;
3. An Order to retain the security and/or pet deposit pursuant to Section 38; and
4. An Order to recover the filing fee pursuant to Section 72.

The tenant seeks:

1. More time to make this application;
2. To cancel the Notice to End Tenancy Given for unpaid Rent;
3. A monetary order for compensation for loss; and
4. Recovery of the filing fee paid for this application.

I accept that the landlord was served with the tenant's Application for Dispute Resolution. I also accept that the tenant was properly served with the Notice to End Tenancy which was posted to the door of the rental unit and which the tenant states she received on September 25, 2009. I also accept that the tenant was served with the Application for Dispute Resolution by way of registered mail.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

## **Background and Findings**

### **Order of Possession**

The evidence is that on September 25, 2009 the landlord served the tenant with a 10 day Notice to End Tenancy for Unpaid Rent and Utilities. The tenant acknowledges receiving the Notice on September 25, 2009. Both parties agree that the tenant paid the rental arrears on October 1, 2009. The landlord testified that the arrears were not paid within the 5 days as set out on the Notice. Both parties agree that the landlord issued a receipt accepting the arrears “for use and occupancy”.

While the tenant has made application to cancel the Notice to End Tenancy given for unpaid rent she did not make that application until almost one month after being served with the Notice. The tenant has made application to extend the time to make her application but she gave no evidence as to the extraordinary circumstances that arose such that she was unable to file her Application for Dispute Resolution within the 5 days allowed under the Act. I am therefore unable to extend the time. Even if I were able to extend the time for the tenant to make an application to cancel the Notice to End Tenancy for unpaid rent that application would be unsuccessful as the undisputed evidence of the parties is that the that the tenant did not pay all of the rent due on September 1, 2009, that she was served with a 10 day Notice to End the tenancy for that unpaid rent on September 25, 2009 and that she did not pay the rental arrears requested in that Notice within the 5 days allowed under the Act.

Having found that the tenant did not pay her rent within the time frames allowed under the Act and having received a request from the landlord for an Order of Possession I am obliged to issue that Order. The landlord testified that the tenant signed a Mutual Agreement to End the tenancy on December 3, 2009 and the landlord would like an Order of Possession effective that date. Orders of Possessions typically provide 2 days notice to the tenant to vacate. The landlord seeks to extend that time to December 3, 2009, the tenant did not dispute this date and I see no reason not to allow the extension and thereby allow the tenant more time to vacate.

**Monetary Order - Landlord*****Rental Arrears/Security Deposit***

The landlord testified that all rental arrears are now paid in full and she therefore withdraws her claim for those arrears and her claim to retain the security deposit in partial satisfaction of the arrears.

**Monetary Order – Tenant**

In her application for dispute resolution the tenant seeks recover of \$187.50. The tenant says this sum was expended by her on the water/sewer bill for the rental unit. The tenant submitted a water billing in evidence totalling \$899.42. The tenant says this is far too much for a water/sewer bill and there must be a leak in the system causing the loss of water.

The landlord testified that the water and sewer billing was \$899.42 because the tenant had not paid previous water and sewer billings. The landlord pointed out that the invoice submitted in evidence by the tenant shows an amount owing of \$669.63 owing from the last billing in June 2009 and when added to the billing for September the grand total owing is now \$899.42.

Based on the evidence of the parties I find that the tenant has failed to prove her claim that the landlord owes her \$187.50. Her application for a monetary award is therefore dismissed.

***Filing Fees***

Having been successful in this application I will allow the landlord to recover the filing fees paid in this matter in the sum of \$50.00 which sum may be deducted by the security deposit she holds on the account of the tenant. The tenant has not been successful and I will therefore dismiss her claim for recovery of the filing fee.

**Conclusion**

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.