

## **DECISION**

### **Dispute Codes:**

**OP, MNR, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid rent, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### **Preliminary Matter**

The Application was amended to include unpaid rent from May and June, 2010.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for unpaid rent?

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

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

The tenancy agreement requires the tenant to pay monthly subsidized rent of \$227.00 due on the first day of each month.

During the hearing the parties agreed:

- That the tenant paid \$111.00 rent in January;
- That the tenant has not made any further rent payments;
- That the tenant received the Notice which was posted to her rental unit door on April 5, 2010; given to her by her neighbour, who removed the Notice from the door.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$797.00 within five days of service. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant file an Application for Dispute Resolution within five days.

The Landlord stated that the tenant now owes \$1,251.00 in rent from January to June, 2010, inclusive.

Some discussion occurred in relation to the possibility of a settled repayment agreement. The landlord was concerned that an agreement could potentially interfere with their ability to enforce the Order of possession in the future; should the tenant not comply with a repayment agreement.

The tenant testified that she has been making all efforts, that her daycare subsidy has now been reinstated, that she has a new job and wishes to come to an agreement with the landlord.

The landlord was unable to proceed with any discussion in relation to an agreement, as he must consult with the housing society board.

### Analysis

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on April 8, 2010.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the tenant is deemed to have received this Notice on April 8, 2010, I find that the earliest effective date of the Notice is April 18, 2010.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was April 18, 2010.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on April 18, 2010, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did not exercise either of these rights and, pursuant to section 46(5) of the *Act*, I find that the tenant accepted that the

tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective **two days after it is served upon the tenant**.

Based upon the acknowledgement of the tenant, I find that the tenant has not paid rent in the amount of \$1,251.00 for January to June, 2010, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The parties are at liberty to come to a repayment agreement. Any payment agreement must be in writing and set out the dates upon which the tenant must make additional rent arrears payments. If the tenant fails to comply with the written repayment agreement, the landlord is then at liberty to immediately enforce the Order of possession. The written agreement should apply only to the unpaid rent that is before me and not include any rent arrears that may occur in the future.

### Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$1,265.00, which is comprised of \$1,251.00 in unpaid January to June, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord is at liberty to reach a repayment agreement with the tenant. If the parties reach such an agreement the landlord may retain the Order of possession and enforce that Order if the tenant fails to comply with the repayment schedule. This Order applies only to the rent arrears that are before me, from January to June, 2010, inclusive.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,265.00**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: June 14, 2010.

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Dispute Resolution Officer