DECISION

<u>Dispute Codes</u>   OPR, MNR, OLC, ERP, RP

<u>Introduction</u>

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for an Order of Possession pursuant to section 55 and for a monetary Order for unpaid rent pursuant to section 67. The tenants applied for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 and for orders to the landlord pursuant to section 33 to make repairs and emergency repairs to the unit.

The tenants did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She provided a copy of a statement attesting to the posting of a 10 Day Notice to End Tenancy for Unpaid Rent on the tenants' door on September 3, 2010. She testified that she sent the tenants a copy of her application for dispute resolution hearing package by registered mail on September 17, 2010. She provided a Canada Post Tracking Number to confirm this mailing. She confirmed that she had received the tenants' application for dispute resolution. I am satisfied that the parties have served one another with their applications for dispute resolution in accordance with the *Act*. I am also satisfied that the landlord's notice to end tenancy was served in accordance with the *Act*.

Rule 10.1 of the Rules of Procedure reads as follows:

> **10.1 Commencement of the dispute resolution proceeding** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Dispute Resolution Officer. The Dispute Resolution Officer may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Since the tenant did not attend the hearing, **I order the tenants' application dismissed without liberty to reapply**.

Issues(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?

Background and Evidence

The landlord testified that this one-year fixed term tenancy commenced on December 6, 2009. According to the terms of this lease, the tenants were to pay $687.50 in rent on the first of each month. The landlord said that she continues to hold the tenants' December 2, 2009 security deposit of $375.00.

The landlord provided undisputed evidence that the tenants did not pay $102.50 in rent for July 2010 and have not paid any rent for August or September 2010. She asked for a monetary Order in the amount of $1,477.50 and an Order of Possession.

Analysis

Order of Possession

The tenants failed to pay the unpaid rent of $1,477.50 within five days of receiving the 10 Day Notice to End Tenancy. They did not make 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 led to the end of his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by September 13, 2010. 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. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Rental Arrears

I find that the landlord is entitled to receive a monetary award for unpaid rent for July, August and September 2010 in the amount of $1,477.50.

Security Deposit

The landlord testified that she continues to hold the tenant's security deposit of $375.00 plus interest from December 2, 2009 until the date of this decision. Over that period, no interest is payable. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Conclusion

I dismiss the tenants' application without leave to reapply. The landlord is provided with a formal copy of a 2 Day 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.

I grant the landlord a monetary Order in the following terms which allows the landlord to retain the tenants' security deposit in partial satisfaction of this monetary Order.

Item	Amount
Unpaid July 2010 Rent	$102.50
Unpaid July 2010 Rent	687.50
Lost August 2010 Rent	687.50
Less Security Deposit	-375.00
Total Monetary Award	**$1,102.50**

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.