

## **DECISION**

Dispute Codes      OPR, MNR, & FF

### Introduction

This hearing dealt with the landlord's application seeking an Order of Possession and a monetary Order due to the tenants' failure to pay rent.

The landlord provided evidence that the tenants were served with the notice of this application and hearing on August 18, 2010 when it was sent by registered mail to the tenants' address. Sections 90(a) of the Act states that documents are deemed to have been received on the fifth (5) after the documents were mailed.

I am satisfied that the tenants' were served with notice of this application and hearing and I proceeded in their absence.

### Issues(s) to be Decided

Have the tenants breached the Act or tenancy agreement, entitling the landlord to an Order of Possession and for monetary relief?

### Background and Evidence

The landlord stated that the tenancy began December 15, 2009 for the monthly rent of \$1,400.00 and a security deposit of \$700.00 paid on the start of the tenancy.

The landlord stated that a 10 day Notice to End Tenancy Due to Unpaid Rent was posted to the door of the tenants' rental unit on August 2, 2010 after the tenants failed to pay the rent.

The landlord's agent stated that the tenants have failed to pay the rent owed for September and October as well. The tenants are allegedly not paying rent due to an issue with a stove in the rental unit. The landlord's agent stated that he informed the tenants' that they were not allowed to withhold rent but the tenants would not pay.

The landlord provided information that the tenants' have filed an application for Dispute Resolution with respect to the alleged issue with the stove. There is no evidence before me that the tenants' filed an application for Dispute Resolution to cancel the 10 day Notice to End Tenancy Due to Unpaid Rent.

The landlord requested a monetary Order due to three month's unpaid rent and an Order of Possession.

### Analysis

Based on the evidence provided by the landlord and in the absence of evidence from the tenants, I find as follows:

Based on the submissions of the landlord, the tenants allegedly have not paid rent based on a loss the use of the stove in the rental unit. While this matter is to be dealt with under the tenants' application for Dispute Resolution, I do find that this issue does not grant the tenants' authority to withhold rent pursuant to section 26 of the *Act*.

I have accepted the landlord's statement that monthly rent is \$1,400.00. In the absence of a written tenancy agreement I find that rent is owed on the 1<sup>st</sup> of each month in accordance with the standards terms of a tenancy agreement under the *Act*.

I note that the 10 day Notice to End Tenancy Due to Unpaid Rent issued by the landlord identifies that the tenants failed to pay the rent owed of \$1,400.00 on August 2, 2010. I find that this is an error and that the rent was owed on the 1<sup>st</sup>. I also accept that the tenants were aware of their failure to pay rent and find that this simple error on the notice does not invalid the notice.

I find that the tenants have failed to pay the rent owed of \$4,200.00 for August, September and October 2010 as required by the tenancy agreement. I find that the tenants were served with a 10 day Notice to End Tenancy due to Unpaid rent and that the tenants failed to either pay the outstanding rent or to file an application for Dispute Resolution to dispute the notice in the five days provided by section 46(4) of the *Act*.

Pursuant to section 46(5) of the *Act*, I find that the tenants have conclusively accepted the end of the tenancy agreement on the effective date of the notice and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

I am satisfied by the evidence provided by the landlord that the tenants failed to pay rent owed of \$4,250.00 for the months of August, September and October 2010 including the reimbursement of the \$50.00 filling fee. As a result, I grant the landlord a monetary Order for the sum of \$1,200.00 pursuant to section 67 of the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenants. This Order may be 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 due to breach of the tenancy agreement by the tenants for the sum of **\$4,250.00**. This Order must be served on the tenants. This Order may be 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: October 04, 2010.

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Dispute Resolution Officer