

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, FF

### Introduction

This is an application by the Landlord for an order of possession resulting from a 10 day notice to end tenancy for unpaid rent, a request for a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties attended the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession resulting from a 10 day notice to end tenancy for unpaid rent?

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The Landlord served the Tenant by posting on the door the 10 day notice to end tenancy on January 3, 2011. The Tenant confirms receiving the notice. The notice displays a unpaid rent amount of \$1,425.00 as of January 1, 2011. The Landlord states that the amount is \$475.00 for December rent arrears and \$950.00 for January 2011 rent. The Landlord states that the Tenant paid the December arrears on January 5, 2011. The Tenant states that this payment was for half of January 2011 rent. The Tenant states that a verbal agreement was made that the Landlord would accept applying the \$475.00 security deposit for the December rent arrears. The Landlord disputes this. The Tenant stated that he read and understood the 10 day notice to end the tenancy, but did not pay the outstanding rent or file an application for dispute resolution within the allowed 5 days. The Landlord received from the Tenant a cash payment of \$250.00 on January 20, 2011 and then again on February 5, 2011 for \$275.00, both receipts that were issued were "for occupy only". The Landlord also provided copies of two posted cheques that the Tenant gave them for January and February rent and confirmed with Vancity staff that the chequing account had no funds. The Landlord returned the two cheques to the Tenant. The Tenant did not dispute this or provide any contradictory evidence. The Landlord is claiming rent arrears of \$475.00

for January rent as per the two provided receipts "for occupy only". The Landlord claims that the February rent remains unpaid as of the date of this hearing. The Tenant confirms that the February rent is unpaid as of this hearing date.

The Landlord states that the notice of hearing and evidence documents were served in person on February 6, 2011. The Tenant has attended and has not disputed this.

### Analysis

The Tenant stated that the outstanding \$475.00 amount stems from the Landlord not applying the security deposit to the \$475.00 December rent arrears which he states that he authorized the Landlord to apply. The RTA states,

#### **Tenant prohibition respecting deposits**

- 21 Unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.

In this situation, neither party has provided any evidence of written consent. Based on this issue, I find that the Landlord did have a \$475.00 December rent arrears from the Tenant and has applied it properly to the 10 day notice to end tenancy. The Landlord has also provided receipts "for occupy only", which I accept as for use and occupancy only. The Landlord correctly applied the January 5, 2011, \$475.00 payment to December rent arrears. The Tenant paid \$250.00 on January 20, 2011 for rent making January 2011 arrears to be \$700.00. The Tenant made another rent payment on February 5, 2011 of \$275.00, which was applied to January rent. The Landlord has provided copies of the two posted rent cheques that were returned to the Tenant. The \$700.00 post dated cheque of February 10, 2011 has a notation of \$475.00 January rent and \$225.00 for February rent. The other posted date cheque of February 18, 2011, for \$475.00 was to be applied to February rent.

The 10 day notice is deemed to be served 3 days after the delivery date, making service complete on January 6, 2011. I find that the Landlord has properly served the Tenant with the 10 day notice to end tenancy for unpaid rent. The Tenant states that he did not pay the rent arrears or file an application for dispute resolution within the allowed 5 days. The Tenant is deemed to accept that the Tenancy is at an end.

Based upon the above facts, I find that the Landlord is entitled to an order of possession for unpaid rent. The Tenant must be served with the order of possession. Should the

Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I find that the Landlord has established a claim for unpaid rent of \$1,425.00. \$475.00 for January rent arrears and \$950.00 for February rent arrears. The Landlord is also entitled to the recovery of the \$50.00 filing fee. I order that the Landlord retain the \$475.00 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance of \$1,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord is granted an order of possession and a monetary order for \$1,000.00. The Landlord may retain the security deposit.

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: February 16, 2011.

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Residential Tenancy Branch