

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNDC, 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 for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The female Agent for the Landlord stated that copies of the Application for Dispute Resolution, Notice of Hearing, and evidence were sent to the Tenant via registered mail at the rental unit, on February 16, 2011. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

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

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and/or loss of revenue; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### **Background and Evidence**

The Landlord submitted a tenancy agreement that shows this tenancy began on October 01, 2010; that the Tenant is required to pay monthly rent of \$1,400.00 on the first day of each month; and that the Tenant paid a security deposit of \$700.00.

The female Agent for the Landlord stated that the Tenant did not pay any rent for January or February of 2011.

The male Agent for the Landlord stated that he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 11, 2011, on February 01, 2011. The Notice declared that the Tenant owed \$1,400.00 in rent that was due on January 01, 2011.

The female Agent for the Landlord stated that it appears the Tenant had vacated the rental unit by February 22, 2011, although to be certain the Landlord is still seeking an Order of Possession.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,400.00 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for January or February of 2011. As he is required to pay rent on the date rent was due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,400.00 in outstanding rent that was due on January 01, 2011 and \$1,400.00 that was due on February 01, 2011.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the evidence provided by the Landlord and 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 by February 11, 2011, 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. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on February 11, 2011. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

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

### Conclusion

I hereby grant the Landlord 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 \$2,850.00, which is comprised of \$2,800.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I authorize the Tenant to retain the Tenant's security deposit of \$700.00, pursuant to section 72(2) of the *Act*, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,150.00. 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: February 28, 2011.

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Residential Tenancy Branch