

## **DECISION**

Dispute Codes      OPR, MNR, CNR, RR, FF

### Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). Landlord BCTFA identified Tenant KO as the tenant and applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Tenants KO and SO identified MR, the BCTFA's agent in this matter, as the landlord and applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant who attended the hearing (the tenant) confirmed that the tenants received the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) the landlord sent by registered mail on August 16, 2011. The landlord confirmed that the tenants handed a copy of the tenants' dispute resolution hearing package to the landlord's secretary on August 29, 2011. The tenant confirmed that his brother, SO, picked up the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 1, 2011 and forwarded it to him. I am satisfied that the parties were served with the above documents in accordance with the *Act*.

The tenant confirmed that he received the landlord's written evidence package well in advance of the hearing. The Residential Tenancy Branch received a written evidence package from the tenants by fax the day before the hearing. Most of this evidence package was illegible. The landlord said that he had received the tenants' evidence package but it was unclear and was without references to addresses or names. The

evidence package in question was a group of receipts from work that was allegedly conducted on the rental unit in 2004.

The landlord said that he wanted to proceed with this hearing because the tenants have not paid rent for August or September 2011. He asked for consideration of the landlord's application for a monetary Order and an Order of Possession. As the tenants' evidence package was submitted well after the deadline for receiving such information and was largely illegible, I have not considered this material.

The landlord asked to amend the amount identified in his application for a monetary Order from the \$1,400.00 to \$2,800.00, the rent now owing. The tenant asked for an amendment to the amount of his monetary claim from \$2,719.97 to \$2,293.57, as a result of a mathematical error made in his original claim. I agreed to amend both applications to the revised amounts sought in their applications.

#### Issues(s) to be Decided

Are the tenants entitled to a cancellation of the landlord's 10 Day Notice? Is the landlord entitled to an end to this tenancy on the basis of the 10 Day Notice and an Order of Possession for unpaid rent? Are the tenants entitled to a monetary award to reduce their rent for emergency repairs that they conducted? Is the landlord entitled to a monetary Order for unpaid rent? Are either of the parties entitled to recover their filing fees from one another?

#### Background and Evidence

This periodic tenancy commenced on December 1, 1997. The current monthly rent is set at \$1,400.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$612.00 security deposit paid on or about December 1, 1997.

The parties agreed that the tenants have not paid any portion of their August or September 2011 rent. The tenant said that the tenants have made many oral requests to obtain compensation for emergency repairs that they paid for in 2004. The landlord entered written evidence that the landlord has no record of any landlord-approved repair work conducted by the tenants dating back to 2004. This written evidence noted that it is the responsibility for "the Property Management firm to arrange for the repairs, and unless it's an emergency, the Ministry is required to approve all costs." The landlord maintained that any repairs conducted by the tenants were not approved by the landlord. Although the tenant said that he had photographs to show that the rental unit has not been maintained by the landlord, he did not enter these into evidence. The tenant said that he did not have any letters to demonstrate the tenants have been pursuing compensation for emergency repairs since the work was done in 2004.

Analysis – Monetary Issues

The tenants have not provided written evidence to support their claim that they incurred costs to conduct emergency repairs to the rental unit. They provided few verifiable details regarding the alleged emergency that caused them to pay for emergency repairs and no documentation of pursuing this matter with the landlord. I also find that the seven-year delay in the tenants' submission of an application for dispute resolution to recover expenses they incurred for emergency repairs also lacks credibility.

For these reasons, I dismiss the tenants' application for a monetary award without leave to reapply. Similarly, I dismiss the tenants' application to reduce rent for repairs conducted by the tenants without leave to reapply.

Based on the undisputed evidence regarding the tenants' failure to pay rent for August and September 2011, I issue a monetary award in the landlord's favour in the amount of \$2,800.00.

I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of the monetary award issued in this decision. As the landlord has been successful in this application, I allow the landlord to recover the filing fee for the landlord's application from the tenant identified in the landlord's application.

Analysis - Order of Possession

Based on the evidence before me, I find that the tenants failed to pay the August 2011 rent within five days of receiving the 10 Day Notice. Since the landlord sent this notice by registered mail, it was deemed served on the fifth day after its mailing, August 21, 2011. The tenants' application for dispute resolution on August 26, 2011 was submitted, within five days of receiving the 10 Day Notice. However, I find that the tenants have not demonstrated that they paid any portion of their August 2011 rent. The tenants have no order from the Residential Tenancy Branch allowing them to withhold any portion of their August (or September) 2011 rent for emergency repairs they claim they conducted in 2004.

Under these circumstances, I find that the tenants acted without authority when they withheld their August 2011 rent. Consequently, I dismiss the tenants' application to cancel the 10 Day Notice with the effect that this tenancy has ended. I issue the landlord an Order of Possession to take effect on September 30, 2011.

Conclusion

I provide the landlord with a formal copy of an Order of Possession effective September 30, 2011. If the tenant(s) do not vacate the rental unit by 1:00 p.m. on September 30, 2011, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and the filing fee for the landlord's application from the tenant identified in the landlord's application less the amount of the security deposit retained by the landlord.

<b>Item</b>	<b>Amount</b>
Unpaid August 2011 Rent	\$1,400.00
Unpaid September 2011 Rent	1,400.00
Less Security Deposit plus Interest (\$612.00 + \$79.10 = \$691.10)	-691.10
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$2,158.90</b>

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*.