

## **DECISION**

Dispute Codes      OPR, MNR, FF

### **Introduction**

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent and the recovery of the filing fee.

Both parties have attended the hearing by conference call and gave testimony. The Tenant did not submit any documentary evidence. As both parties have attended the hearing and have acknowledged receiving the notice of hearing and evidence package submitted, I am satisfied that both parties have been properly served.

During the hearing, the Landlord amended his monetary claim lowering it to \$2,400.00, consisting of \$2,000.00 in unpaid rent and \$400.00 for the Tenant having additional occupants in the rental unit for two months.

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

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

### **Background and Evidence**

This Tenancy began on May 20, 2012 on a month to month basis as shown by the submitted signed tenancy agreement. The monthly rent is \$1,000.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$500.00 was paid.

The Landlord states that the Tenant was served with a 10 day notice to end tenancy dated July 9, 2012 that indicates that rent of \$1,000.00 was due and unpaid on July 1, 2012. The notice shows an effective date of July 19, 2012. The Landlord states that the notice was personally delivered to the Tenant at the rental unit on July 9, 2012 which was witnessed. The Landlord has submitted a proof of service document as evidence. The Tenant has acknowledged receiving the notice from the Landlord and has confirmed that no rent has been paid since receiving the notice on July 9, 2012. The Tenant does dispute that she attempted to pay the rent to the Landlord on July 12, 2012, but that he refused it. The Tenant also confirms that she read the notice, but has not filed for dispute resolution.

The Landlord seeks an order of possession and a monetary order for unpaid rent for July and August of \$2,000.00 (\$1,000.00 per month).

The Landlord has provided a copy of the tenancy agreement which shows a provision if the number of "permanent tenants changes from the agreed number, each additional tenant will be charged \$200.00/month." The Tenant disputes this, stating that there are no additional permanent tenants and that her two children listed on the agreement currently no longer reside with her and that she is currently the only occupant.

### Analysis

I accept the undisputed testimony of the Landlord that the Tenant was served with the 10 day notice to end tenancy for unpaid rent on July 9, 2012. The Tenant has confirmed receiving the notice in her direct testimony. The Tenant states that she tried to pay the rent on July 12, 2012, but that the Landlord refused. The Landlord disputes this. I find on a balance of probabilities that I prefer the evidence of the Landlord over that of the Tenant. The Tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based upon the above facts, I find that the Landlord is entitled to an order of possession. 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.

As for the monetary order request, I find that the Landlord has established a claim for the \$2,000.00 in unpaid rent for July and August as confirmed by the Tenant's direct testimony. This portion of the claim is granted.

The Landlord's claim for \$400.00 (\$200.00 per month) for additional Tenant's has not been established. As explained to the parties during the hearing the onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as he has made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The Tenant has disputed this

claim made by the Landlord. The Landlord is unable to provide any additional supporting evidence. This portion of the Landlord's claim is dismissed.

I find that the Landlord has established a total monetary claim of \$2,000.00. The Landlord is entitled to recovery of the \$50.00 filing fee. The Landlord is granted a monetary order for \$2,050.00. 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 \$2,050.00.

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: August 09, 2012.

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Residential Tenancy Branch