

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlord's agents gave affirmed testimony at the Hearing.

The Landlord's agents testified that the Notice of Hearing documents were mailed to each of the Tenants, via registered mail, to the rental unit on November 7, 2012. The Landlords provided the receipts and tracking numbers in evidence.

Based on the affirmed testimony of the Landlord's agents, I am satisfied that both of the Tenants were duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence. The teleconference remained open for 15 minutes.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

The Landlord's agents gave the following testimony and documentary evidence:

A copy of the tenancy agreement was provided in evidence. Monthly rent is \$700.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$200.00 on December 1, 2011.

On October 23, 2012, the Landlord's agent served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, by registered mail. The Landlord provided a proof of service document along with the registered mail receipt in evidence.

The Tenants have not paid any rent for the months of August through to December, 2012. The female Tenant advised the Landlord's agent that they would be moving out by the end of November, 2012, however on December 3, 2012, the lights were on at the rental unit and there appeared to be furniture inside. The Landlord's agent had

provided 24 hours written notice that he would be inspecting the rental unit, but when he attempted to open the door, it was discovered that the Tenants had changed the locks without the Landlord's knowledge or consent.

### **Analysis**

I accept that the Landlord served the Tenants with the Notice to End Tenancy by registered mail sent October 23, 2012. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected five days after mailing the documents. I also accept the Landlord's evidence that the Tenants did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on November 7, 2012. The Tenants are overholding and I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

Based on the undisputed testimony of the Landlord's agents, I find that the Landlord has established a monetary award for unpaid rent and for loss of revenue in the total amount of **\$3,500.00** (\$700.00 x 5 months of unpaid rent).

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I hereby provide the Landlord a Monetary Order, calculated as:

Unpaid rent and loss of revenue	\$3,500.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$3,550.00
Less security deposit	- \$200.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$3,350.00</b>

### **Conclusion**

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$3,350.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 07, 2012.

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Residential Tenancy Branch