

DECISION

Dispute Codes:

OPR, CNR, MNR, MNDC, MNSD, OLC, ERP, RP, O, FF

Introduction

This hearing was convened in response to cross-applications by the landlord and the tenant.

The landlord's application sought an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

The tenant's application sought to cancel the Notice to End for Unpaid Rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the landlord to comply with the Act, regulation or tenancy agreement, to make emergency repairs, and to make repairs to the unit.

The landlord in this matter attended the conference call hearing, and the tenant did not. As a result, **the tenant's application is dismissed** without leave to reapply, and the hearing proceeded on the merits of the landlord's application. The landlord was given opportunity to present their application and make submissions.

The landlord's testimony is that the tenant is still residing in the rental unit.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony in this matter is that the tenancy began on April 01, 2005. Rent is currently in the amount of \$1050 per month is payable in advance on the first day of each month. Until November 2009 the rent was \$1050 and the tenants were also responsible for paying \$200 toward utilities for the residential property. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$525. The tenant failed to pay rent in the month(s) of May through to October 2009 and on October 21, 2009 the landlord prepared a 10 Day Notice to End Tenancy for Unpaid Rent and utilities in the total of \$7500 (\$6300 for rent and \$1200 for utilities) and served the tenant with the notice by sending it to the tenant by Registered mail on the same date. The landlord acknowledges he dated the Notice two days later for October 23, 2009 in compensation for mailing time. The landlord provided a registered mail receipt dated October 21, 2009 with the requisite tracking number. The tenant has further failed to pay rent in the month of November and December 2009; however, the landlord does not seek equivalent rent for the later two months. The landlord does seek an immediate Order of Possession. The quantum of the landlord's monetary claim is for **\$7500.**

Analysis

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant was deemed served with the Notice to End October 27, 2009. The tenant has not paid the outstanding rent and applied for dispute resolution to dispute the notice, by amendment of their application November 09, 2009, – well beyond the prescribed five (5) days afforded by the Residential Tenancy Act to dispute such a Notice to End, and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, November 03, 2009.

Based on the above facts I find that the landlord is entitled to an Order of Possession.

I further find that the landlord has established a claim for **\$7500** in unpaid rent and utilities. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$7550**.

Conclusion

I grant an Order of Possession to the landlord. The landlord is being given an Order of Possession **effective 2 days after it is served on the tenant**. The landlord has discretion as to when they will act on the Order. The tenant must be served with this Order of Possession; and, once served, if the tenant fails 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 Order that the landlord retain the security deposit and interest of \$543.59 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$7006.41**. If necessary, this order may be filed in the 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*.
