

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in the tenants' mail box on November 10, 2009. The landlord also sought a Monetary Order for unpaid rent, NSF fees, late fees and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on November 26, 2009, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent, NSF and late fees, recovery of the filing fee and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on May 1, 2008. Rent is \$830 per month and the landlord holds a security deposit of \$415 paid on April 21, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 10, 2009 was served when the tenants rent cheque for November had been returned NSF. In the interim, the December rent cheque was also returned NSF.

Analysis

Section 46 of the *Act*, which deals with notice to end tenancy for unpaid rent, provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy ends on the date set out in the notice. The end date on the notice in question was November 20, 2009.

In this instance, I find that the tenants have not made application to dispute the Notice to End and the rent arrears was not paid within five days of receipt of the notice.

Therefore, the landlord requested, and I find she is entitled to, an Order of Possession effective two days from service of it on the tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent. In addition, as per the rental agreement, I find that the landlord is entitled to \$25 for each of the two NSF cheques and \$25 for each of the late fees, the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

November rent of \$830 plus \$25 NSF fee and \$25 late fee	\$ 880.00
December rent of \$830 plus \$25 NSF fee and \$25 late fee	880.00

Filing fee	50.00
Sub total	\$1,810.00
Less retained security deposit	- 415.00
Less interest	- 4.34
TOTAL	\$ 1,390.66

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenants.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary for \$1,390.66, enforceable through the Provincial Court of British Columbia, for service on the tenants.