

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on November 18, 2009 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on November 2, 2009. The landlord also sought a Monetary Order for unpaid rent, late fees and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 65(3)(c) of the Act to permit the landlord to amend the application to include a request for authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing served in person on November 19, 2009, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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, late fees and recovery of the filing fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on November 15, 2007. Rent is \$825 per month and the landlord holds a security deposit of \$412.50 paid on October 31, 2007.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had not paid the rent for November 2009 and had a rent shortfall for October 2009 of \$435. In the interim, the tenant remains in the rental unit and did not pay the rent for December 2009. The landlord seeks a Monetary Order for the unpaid rent plus late fee of \$25 for each of the three months.

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 was November 12, 2009 on the November 2nd notice.

In this instance, I find that the tenant has 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 he is entitled to, an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and late fees and the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

October rent shortfall	\$ 435.00
November rent and parking shortfall	825.00
December rent	825.00
Late fees for each of the three months @ \$25 per month	75.00
Filing fee	<u>50.00</u>
Sub total	\$2,210.00
Less retained security deposit	- 412.50
Less interest from October 31, 2007 to date	- 7.25
TOTAL	\$1,790.25

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 tenant.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary for \$1,790.25, enforceable through the Provincial Court of British Columbia, for service on the tenant.