

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 by posting on the tenant's door on November 13, 2009. The landlord also sought a Monetary Order for the unpaid rent 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 December 21, 2009, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

This matter was originally dealt with as a Direct Request proceeding on December 9, 2009 but was adjourned to the present conference call hearing for clarification of the duration and amounts of rent shortfalls.

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 and recovery of the filing fee and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on November 19, 2006. Rent has varied through the tenancy but at present is \$919 per month. The landlord holds a security deposit of \$459.50 paid on November 20, 2006.

During the hearing, the landlord gave evidence that the rental unit is subsidized by the BC Housing Corporation and, until July 1, 2009, the tenant's share of rent was \$474 per month. She stated that rent is set a 30 percent of household income and tenants are required to submit proof of income semi-annually for a rent subsidy review in order for the non-profit society landlord to obtain the subsidy.

As a result of the tenant's repeated failure to provide proof of income by July 1, 2009, the subsidy was lost and the rent increased to \$919 per month.

The landlord stated that, in spite of several notes and verbal requests to the tenant, and several promises by the tenant to provide the necessary documentation to secure the subsidy, the tenant had still not complied by the time of the hearing.

She stated that the tenant's rent had started falling behind before the subsidy issue arose, beginning in January 2009 when the tenant paid only \$300 of the \$474 rent due, seven days late.

The landlord submitted into evidence eight notes to the tenant requesting the documentation to support the rent subsidy and six 10-day Notices to End Tenancy served since January 2, 2009.

She also submitted copies of nine notes promising to pay off the accumulating rent arrears and stated that the tenant had left 14 messages requesting additional time and promising to make payment. The landlord further stated that the tenant had paid no rent for January 2010 and was issued with a further Notice to End Tenancy on January 4, 2010.

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. That end date was November 26, 2009 on the November 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 she is entitled to, an Order of Possession effective two days from service of it upon the tenant.

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

Accumulating rent shortfalls (rent increased from \$447 to \$919 on July 1, 2009)		
	Rent due	Rent paid
January 2009	474.00	300.00
February 2009	474.00	300.00
March 2009	474.00	700.00
April 2009	474.00	300.00
May 2009	474.00	465.00
June 2009	474.00	425.00
July 2009	919.00	850.00
August 2009	919.00	900.00
September 2009	919.00	400.00
October 2009	919.00	620.00
November 2009	919.00	420.00
December 2009	919.00	1,450.00
January 2010	919.00	0.00
Totals	\$9,277.00	\$7,130.00

Balance owing	
Total rent owed	\$9,277.00
Filing fee	50.00
Less total rent paid	<u>- 7,130.00</u>
Sub total	\$2,197.00
Less retained security deposit	- 459.50
Less interest (Nov. 20, 2006 to date)	<u>- 13.97</u>
TOTAL	\$1,723.53

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for \$1,723.53, enforceable through the Provincial Court of British Columbia, for service on the tenant.

January 20, 2010