

DECISION

Dispute Codes: CNR

Introduction

This application was brought by the tenant seeking to have set aside a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on December 8, 2009.

Despite having made application and having been provided with a Notice of Hearing, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. The respondent landlord did participate.

Therefore, with the attendance of the respondent landlord in the absence of the applicant tenant, I find that the application is dismissed without leave to reapply.

On hearing that determination, the landlord requested an Order of Possession pursuant to section 55(1) of the *Act* which permits such a request when a tenant's application to set aside a Notice to End Tenancy does not succeed or is dismissed.

Issues to be Decided

As section 55(1) of the *Act* compels the issuance of the Order of Possession, only the effective date of the order remains to be determined.

Background, Evidence and Analysis

This tenancy began on August 1, 2009. Rent is \$995 per month and the landlord holds a security deposit of \$497.50.

During the hearing, the landlord submitted into evidence the Notice to End Tenancy of December 8, 2009 advising the tenant of a rent arrears of \$1,818.24 at the time of service.

The landlord stated that, in the interim, the tenant remains in the rental unit, has not paid the arrears or the rent for January 2010, and the unpaid balance has grown to \$2,813.24.

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 of tenancy date set by the notice was December 18, 2009 which would automatically correct to December 21, 2009 to account for the three days that notice posted on the door is deemed to have been served.

In this instance, I find that the tenant made application to dispute the Notice to End but the rent arrears was not paid.

As the tenant's application is dismissed, I find that the landlord is entitled to an Order of Possession under section 55(1) of the Act, effective two days from service of it on the tenant.

Conclusion

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.

January 26, 2010.