

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 person on January 2, 2010. 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.

At the commencement of the hearing, the landlord advised that of the two tenants named on the application, only the primary tenant was a signatory to the rental agreement and only the primary tenant owed rent. As the other is an “occupant” and not a “co-tenant”, I exercised the discretion granted by section 64(3)(c) of the Act to remove the occupant as a respondent in this proceeding.

Despite having been served with the Notice of Hearing served in person on January 11, 2010, 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 the unpaid rent and filing fee, and authorization to retain the security and pet damage deposits in set off..

Background and Evidence

This tenancy began on or about January 1, 2002. Rent is \$800 per month and the landlord holds a security deposit of \$325 paid on or about January 1, 2002.

During the hearing, the landlord submitted into evidence a ledger showing that the tenant had been paying rent irregularly and had ended 2009 with an accumulated rent shortfall of \$1,115. In the interim, the tenant paid no rent for January or February but the Ministry of Employment and Income Assistance had paid \$375 for each of the two months on behalf of the occupant. This left a shortfall of \$425 for each of January and February.

Analysis

Section 46 of the *Act* provides that a landlord may issued a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance, the tenant owes the landlord an amount calculated as follows:

Accumulated rent arrears to the end of 2009 as per submitted ledger	\$1, 115.00
Rent shortfall for January 2010	425.00
Rent shortfall for February 2010	425.00
Filing fees	50.00
Sub total	\$2,015.00
Less retained security deposit	- 325.00
Less interest (January 1, 2002 to date)	- 11.49
TOTAL	\$1,678.51

Conclusion

The landlord's copy of this decision is accompanied by a 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 is also issued with a Monetary Order for \$1,678.51, enforceable through the Provincial Court of British Columbia, for service on the tenant.

February, 2010