

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 on December 12, 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 , 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 December 1, 2009. Rent is \$800 per month and the landlord holds a security deposit of \$300 paid on December 19, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had a rent shortfall of \$345 for December and he had paid only \$300 of the required \$400 security deposit.

In the interim, the tenant did not pay any rent for January or February of 2010. Therefore, the landlord requests a Monetary Order for the unpaid rent and a late fee for \$25 for each of the three months.

Analysis

Section 46 of the *Act* provides that a landlord may issue 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, the tenant is conclusively presumed to have accepted that the tenancy ended on the end date set on the Notice to End Tenancy under section 46(5) of the *Act*.

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 the unpaid rent and late fees, 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:

December 2009 rent shortfall	\$ 345.00
Rent for January 2010	800.00
Rent for February 2010	800.00
Late fees for each of the three months (\$25.00 x 3)	75.00
Filing fees	50.00
Sub total	\$2,070.00
Less retained security deposit (No interest due)	- 300.00
TOTAL	\$1,770.00

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 \$1,770.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

February 25, 2010