

DECISION

Dispute Codes: OPR, MNR, MND, 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 January 5, 2010. The landlord also sought a Monetary Order for the unpaid rent, damage to the rental unit, 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 served by registered mail sent on January 20, 2010, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their 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, damages and filing fee, and authorization to retain the security and pet damage deposits in set off.

Background and Evidence

This tenancy began on July 1, 2007. Rent is \$850 per month and the landlord holds a security deposit of \$400 paid on or about May 28, 2007.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had a rent shortfall of \$630 for December 2009 and had not paid the rent for January 2010. In the interim, the tenants have not paid the rent for February, and rent due on the day of the hearing on March 1, 2010 had not been paid.

The landlord gave further evidence that, as a result of a hearing on December 22, 2009, he was granted a Monetary Order for \$875 for rent for December 2009 and one-half of the filing fee.

The landlord stated that there had been water damage to the unit below the rental unit and to a door, but repairs have not yet been made and he does not yet know the cost of repairs.

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 tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it. Therefore, under the *Act*, they are conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy.

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

As to the landlord's monetary claims, I find that rent shortfall for December is covered by the Monetary Order issued on December 22, 2009.

I 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 tenants owe the landlord an amount calculated as follows:

Rent for January 2010	\$ 850.00
Rent for February 2010	850.00
Filing fees	<u>50.00</u>
Sub total	\$1,750.00
Less retained security deposit	- 400.00
Less interest (May 28, 2007 to date)	- <u>9.64</u>
TOTAL	\$1,340.36

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 \$1,340.36, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for loss of rent for March 2010 and for damage to the rental unit when the tenancy has ended and the landlord is able to provide a final accounting of these claims.

March 1, 2010