

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 19, 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.

This matter was originally dealt with as a Direct Request Proceeding on February 8, 2010 on written submission only, but was adjourned to the present participatory hearing to clarify the tenant's name and the rental rate.

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 deposit in set off against the balance owed.

Background and Evidence

This tenancy began on October 1, 1999. Rent is \$830 per month and the landlord holds a security deposit of \$350 paid on September 7, 1999.

During the hearing, the landlord gave uncontested evidence that the tenants had accumulated rent shortfalls with partial or no rent payments having been made from July 2009 to January of 2010. The tenants were able to make payments for February, March and April, but due to illness and unemployment, have not been able to pay down the arrears. The landlord accepted the later payments for use and occupancy only.

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 section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy which was January 29, 2010.

Accordingly, 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 tenants owes the landlord an amount calculated as follows:

| | |
|--------------------------------------------------|-------------------|
| July 2009 rent shortfall | \$ 490.00 |
| August 2009 rent | 800.00 |
| September 2009 rent | 800.00 |
| October 2009 rent | 800.00 |
| November 2009 rent (increase in effect) | 830.00 |
| December 2009 rent | 830.00 |
| January 2010 rent | 830.00 |
| Filing fee | <u>100.00</u> |
| Sub total | \$5,480.00 |
| Less retained security deposit (No interest due) | - 350.00 |
| Less interest (September 7, 1999 to date) | - <u>33.45</u> |
| TOTAL | \$5,096.55 |

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession to take effect two days from service of it on the tenants.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$5,096.55, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 25, 2010