

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 by posting on the tenant's door on January 13, 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.

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 December 1, 2006. Rent is \$790 per month and the landlord holds a security deposit of \$360 paid on November 21, 2006.

During the hearing, the parties concurred that, despite partial payments, the tenant has an ongoing rent shortfall from January 2010 and, including the rent for April 2010, currently totals \$1,680. The landlord has accepted the partial payments “for use and occupancy only,” indicating that acceptance did not reinstate the tenancy.

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, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy. That date, January 23, 2010 is corrected to January 26, 2010 after taking into account the three day deemed service for notice served by posting under section 90 of the *Act*.

Accordingly, I find that the landlord is entitled to an Order of Possession effective at 1 p.m. on April 30, 2010 as requested.

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 shortfall to April, 2010	\$1,680.00
Filing fee	50.00
Sub total	\$1,730.00
Less retained security deposit	- 360.00
Less interest (November 21, 2006 to date)	- 11.08
TOTAL	\$1,358.92

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 at 1 p.m. on April 30, 2010.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$1,358.92, enforceable through the Provincial Court of British Columbia, for service on the tenant.

April 15, 2010