

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 February 23, 2010. The landlord also sought to recover the filing fee for this proceeding.

While the landlord has waived her right to a Monetary Order for the unpaid rent, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend the application to request authorization to retain the security deposit in partial satisfaction of any amount found owing.

Despite having been served with the Notice of Hearing sent by registered mail on March 15, 2010, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, the hearing proceeded in his absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on February 1, 2009 although the tenant had lived in another unit in the park from February 1, 2008. The tenant paid a security deposit of \$400 on or about February 1, 2008, and paid an added \$12.50 when he relocated to the present unit on or about February 1, 2009. Current rent is \$825 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant was in arrears by \$1,200. She stated that he had made partial payment in the interim, but remains in arrears by \$1,125. She stated she had issued receipts for the partial payments with the notation, "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 second Notice to End Tenancy which was corrected to March 6, 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 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:

Amount owed to landlord		
Outstanding rent	\$1,125.00	
Filing fee	50.00	
Sub total	\$1,175.00	\$1,175.00
Tenant's Credits		
Less retained security deposit (Feb 1, 2008 to Feb. 1, 2009)	400.00	
Less interest	5.49	
Less addition to deposit on Feb 1, 2009 (no interest due)	12.50	
Sub total	417.99	- 417.99
TOTAL (remaining balance waived by landlord)		\$ 757.01

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 two days from service of it on the tenant.

In addition, **I hereby authorize and order** that the landlord may retain \$417.99 being the total value of the tenant's security deposit plus interest in satisfaction of the greater amount of \$1,175.00 owed in unpaid rent and the filing fee for this proceeding.

April 27, 2010