

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 April 23, 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.

Despite having been served with the Notice of Hearing served in person on April 8, 2010, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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 deposit in set off.

Background and Evidence

According to evidence submitted by the landlord, she originally engaged the tenant as a caretaker/building manager in January 2010. That arrangement was discontinued after the tenant admitted to keeping rents for three units paid to her in cash in February, a matter that was the subject of a police investigation.

On February 9, 2010, the tenant gave written notice that she would leave as soon as possible and by March 31, 2010 at the latest.

The parties signed a rental agreement on February 20, 2010 under which rent was to be \$460 per month and the tenant paid a \$230 security deposit on March 1, 2010. At the time of the landlord's application on April 7, 2010, the tenant had refused to move as promised and had not paid rent for March or April 2010. In the interim, the March rent was paid but the May rent was not and April rent remained outstanding..

The landlord also gave evidence that the tenant had boasted to other tenants that she could live rent-free for three months while the landlord awaited due process.

The landlord now seeks an Order of Possession and a Monetary Order for the rent for April and May 2010 plus filing fee and authorization to retain the security deposit.

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) the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy.

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 plus interest in set off against the balance owed, the tenant owes the landlord an amount calculated as follows:

April rent	\$460.00
May rent	460.00
Filing fee	<u>50.00</u>
Sub total	\$970.00
Less retained security deposit (no interest due)	- 230.00
TOTAL	\$740.00

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 to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$740.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

May 20, 2010