

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 April 2, 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, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 given by the landlord, this tenancy began approximately two years ago when the tenant relocated from another suite in the building where he had resided for approximately one year. Rent is \$650 per month and the landlord holds a security deposit of \$325 although the landlord is not certain of the date on which it was paid. Therefore, for the purpose of calculating interest I will set the payment date at January 1, 2007 in order to give the tenant the maximum indicated by the start date estimate.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay the rent for April, 2010. In the interim, the landlord stated that the tenant did not pay the rent for May, 2010.

In written evidence submitted on May 7, 2010, the tenant has included a copy of the face side of a cheque written on his account dated May 1, 2010, made out to the landlord for \$600, and bearing the notation "650 – 50 RTB + 30 day notice to vacate." The reference to \$50 probably refers to a filing fee awarded to the tenant in a hearing between the parties on March 5, 2010.

The tenant's evidence also included a copy of a bank money order for \$650 dated April 3, 2010 with the landlord named as payee. An accompanying written statement dated April 20, 2010 from another party states that he witnessed the tenant put the money order under the office door, although it does not state on what date.

The tenant's package also includes a copy of a letter dated April 25, 2010 to giving notice to end tenancy effective May 31, 2010.

Under cover letter of May 21, 2010, a legal advocate for the tenant submitted the same evidence suggesting the landlord's application should be dismissed as vexatious.

According to the landlord, the advocate had recently advised him that he would not represent the tenant at the hearing.

The landlord swears that he has never received the rent payments or the tenant's notice to end the tenancy.

The landlord continues to seek 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 have conflicting evidence as to whether the tenant paid the rent by virtue of the landlord's sworn testimony vs. the tenant's photocopied money order dated April 3, 2010.

Taking into account the fact that neither the tenant nor his advocate took part in the hearing to allow their submissions to be tested, I prefer the evidence of the landlord and find that the tenant did not pay the rent within five days of receiving the notice. In addition, he 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. Taking into account the tenant's declared notice to end the tenancy on May 31, 2010, the Order of Possession will take effect on that date.

Again, taking into account the failure of the tenant to be represented in person or by his advocate, I prefer the sworn evidence of the landlord on the question of the unpaid rent.

Accordingly, and 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 (after \$50 award for filing fee from previous hearing)	\$ 600.00
May rent	650.00
Filing fee	<u>50.00</u>
Sub total	\$1,300.00
Less retained security deposit	- 325.00
Less interest (January 1, 2007 to date)	- <u>9.83</u>
TOTAL	\$ 965.17

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 May 31, 2010.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$965.17 enforceable through the Provincial Court of British Columbia, for service on the tenant.

May 28, 2010