

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 served by registered mail on March 9, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the landlord advised that the tenants had abandoned the rental unit on or about April 7, 2010 and withdrew the request for an Order of Possession. In addition, I exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend his application to include a request for authorization to retain the security deposit in set off against any balance found owing.

This matter was originally dealt with as a Direct Request Proceeding on April 12, 2010 on written submissions only but was adjourned to the present participatory hearing as only one of the two tenants had been served with the Notice of Direct Request.

Despite having been served with the Notice of Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and loss of rent and the filing fee for this proceeding, and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on August 1, 2009. Rent is \$675 per month and the landlord holds a security deposit of \$337.50 paid on .

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenants had not paid the rent for March 2010. In the interim, the March rent remained unpaid and the tenants did not pay rent for April 2010.

The landlord stated that that they had closed their hydro account on April 7, 2010 and believes they vacated on or about that date with giving notice or providing a forwarding address.

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.

The effect end date would have automatically corrected from March 19, 2010 to March 24, 2010 to account for the five days allowed for service under section 90 of the *Act* and I find that the tenants were been over holding beyond that date.

I 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 lowed, the tenants owe the landlord an amount calculated as follows:

Rent for March 2010	\$ 675.00
Rent/loss of rent for April 2010	675.00
Filing fee	<u>50.00</u>
Sub total	\$1,400.00
Less retained security deposit (No interest due)	- 337.50
TOTAL	\$1,062.50

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$1,062.50, enforceable through the Provincial Court of British Columbia, for service on the tenants.

May 31, 2010