

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 January 13, 2010 by posting it on the tenant's door. 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 November 1, 2008. Rent is \$943.67 per month and the landlord holds a security deposit of \$455 paid on November 1, 2008.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy had been served when the tenant had a rent short fall from December 2009 of \$13.67 and had not paid the rent for January 2010.

In the interim, the tenant did not pay rent for February or March of 2010 and remained in the rental unit.

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 which was January 27, 2010.

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:

December 2009 rent shortfall	\$ 13.67
January 2010 rent	943.67
February 2010 rent	943.67
March 2010 rent	943.67
Filing fee	50.00
Sub total	\$2,894.68
Less retained security deposit (No interest due)	- 455.00
Less interest (September 7, 1999 to date)	- 1.14
TOTAL	\$2,438.54

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession to take effect two days from service of it on the tenants.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$2,438.54, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 26, 2010