

DECISION

Dispute Codes: OPR, MNR, MNDC, 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 March 10, 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 sent by registered mail on April 16, 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

This tenancy began on January 1, 2007. Rent is \$819.50 per month including parking and the landlord holds a security deposit of \$362.50 paid on January 1, 2007.

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 March 2010.

She stated that the tenant had paid the March rent on April 13, 2009 and the landlord issued a receipt with the notation, "For use and occupancy only," indicating that by accepting the rent, the landlord did not intend to reinstate the tenancy.

In the interim, the tenant has paid rent for April and May with receipts issued for use and occupancy only, but at the time of the hearing she had not paid the rent for June 2010.

Therefore, the landlord seeks an Order of Possession and a Monetary Order for the June rent.

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:

Rent for June .	\$ 819.50
Filing fee	50.00
Sub total	\$869.50
Less retained security deposit	- 362.50
Less interest (January 1, 2007 to date)	- 10.36
TOTAL	\$496.64

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 \$496.64, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 2, 2010