

DECISION

Dispute Codes:

Landlord: OPR, MNR, MNSD and FF
Tenant: CNR

Introduction

These applications were brought by both the landlord and the tenant.

By application of June 3, 2010, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on May 14, 2010. The landlord also seeks a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of May 21, 2010, the tenant seeks to have the Notice to End Tenancy set aside.

Despite having brought application, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, his application is dismissed without leave to reapply and the hearing proceeded on the landlord's application in the tenant's absence.

Issues to be Decided

The landlords' application requires decisions on whether the Notice to End Tenancy should be set aside or upheld, whether the landlord is entitled to a Monetary Order for unpaid rent and filing fee and authorization to retain the security deposit.

Background and Evidence

This tenancy began on October 1, 2008. Rent is \$695 per month and the landlord holds a security deposit of \$347.50 paid on or about September 15, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant's rent cheque for May 2010 was returned NSF. The landlord stated that May rent had never been made up and in the interim, the tenant has paid no rent for June or July of 2010.

The landlord further noted that while the tenant claims the Notice to End Tenancy had been posted on his door, the landlord stated that it was, in fact, served in person and submits written verification by a witness of the personal service. While I accept the evidence of the landlord on the question, it is of no consequence as tenant's application verifies that he was served.

Analysis

Section 46 of the Act states that if rent is not paid, a landlord may end the tenancy by issuing a 10-day Notice to End Tenancy on any day after the rent is due. The tenant may nullify the notice by paying the overdue rent within five days of receipt of the Notice. In this instance, I find that the rent remained unpaid to the time of the hearing.

Accordingly, I find that the Notice to End Tenancy is valid and lawful and 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 and authorization to retain the security deposit in set off, which I award under section 72 of the *Act*, the tenant owes the landlord an amount calculated as follows:

May rent	\$ 695.00
June rent	695.00
July rent	695.00
Filing fee	<u>50.00</u>
Subtotal	\$2135.00
Less retained security deposit	- 347.50
Less interest (September 15, 2008 to date)	<u>- 1.54</u>
TOTAL	\$1,785.96

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords' copy of this decision is accompanied by:

1. An Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.
2. In addition to authorization to retain the security deposit in set off, a Monetary Order for \$1,785.96, enforceable through the Provincial Court of British Columbia, for service on the tenant.

July 8, 2010