

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 tenants' door on June 2, 2010. The landlord also sought a Monetary Order for the unpaid rent, late fees, 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, late fees and filing fee, and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on July 1, 2009. Rent is \$850 per month and the landlord holds a security deposit of \$425 paid on June 20, 2009.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy had been served when the tenants had not paid the rent for June 2010.

The tenants made a payment of \$500 on June 16, 2010, but the balance remains outstanding, and in the interim, the tenants have not paid the rent for July which the landlord requested by amendment to her application.

The parties gave evidence that they are hopeful that the tenants will be able to catch up on the rent arrears shortly, but the landlord requested the Order of Possession and Monetary Order in the event they are not able to do so.

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) the *Act*, the tenants are 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 in set off against the balance owed, the tenants owe the landlord an amount calculated as follows:

June 2010 rent short fall	\$ 350.00
June late fee	25.00
July rent	850.00
July late fee	25.00
Filing fee	<u>50.00</u>
Sub total	\$1,300.00
Less retained security deposit (no interest due)	- 425.00
TOTAL	\$ 875.00

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 tenants.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$875.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

July 29, 2010