

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlords on August 11, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on August 2, 2010. The landlords also sought a Monetary Order for the unpaid rent.

The matter was dealt with as a Direct Request proceeding on August 30, 2010, but was adjourned to the present participatory hearing due to a need to clarify the service of the Notice to End Tenancy.

Despite having been served with the notice of the present participatory 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.

At the commencement of the hearing, the landlords advised that the tenants had vacated on August 15, 2010 that they no longer needed an Order of Possession. In addition, as authorized by section 64(3)(c) of the *Act*, I have amended the landlords' application to include a request for authorization to retain the tenants' security deposit in set off and to recover the filing fee for this proceeding, items not available on a Direct Request proceeding but permissible in the present participatory hearing.

Issues to be Decided

This application now requires a decision on whether the landlords are entitled to a Monetary Order for the unpaid rent/loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

Background and Evidence

This tenancy began on December 1, 2009. Rent was \$1,100 per month due on the first, and the landlords hold a security deposit of \$550 paid on November 24, 2009.

During the hearing, the landlords gave evidence that the Notice to End Tenancy had been served when the tenants had not paid the rent due on August 1, 2010.

The landlords further stated that tenants vacated the rental unit on August 15, 2010 without having paid the rent for August and without providing a forwarding address.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due. 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 make application to dispute the notice and I accept the evidence of the landlord that they did not pay the full rent within five days of receiving the notice.

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.

Even though the tenants moved out at mid month, as the tenancy ended as a result of non-payment of rent, the landlords are entitled to rent for the full month. Therefore, I find that, including rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, the tenants owe the landlords an amount calculated as follows:

Rent for August 2010	\$1,100.00
Filing fee	50.00
Sub total	\$1,150.00
Less retained security deposit (No interest due)	- 550.00
TOTAL	\$ 600.00

Conclusion

In addition to authorization to retain the security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$600.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

October 12, 2010