

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 August 3, 2010. The landlord also sought 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.

Despite having been served with the Notice of Hearing sent by registered mail on August 16, 2010, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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, recovery of the filling fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

The landlord stated that because his company took over the rental building recently, he did not have the exact date the tenancy began, but he stated that it was approximately one year ago. Rent is \$400 per month and the landlord holds a security deposit of \$200.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had not paid the \$400 rent due on August 1, 2010. In the interim, the tenant remains in the rental unit and has not paid the rent for September 2010.

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 make application to dispute the notice and I accept the evidence of the landlord that the tenant did not pay the rent within five days of receiving the notice. I accept the evidence of the landlord the rent for both August and September remained unpaid at the time of the hearing.

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 August 13, 2010, automatically corrected to August 16, 2010 under section 53 of the *Act* to allow for the three days deemed service for notice served by posting.

Therefore, 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 rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, the tenant owes the landlord an amount calculated as follows:

Rent for August 2010	\$400.00
Rent for September 2010	400.00
Filing fee	<u>50.00</u>
Sub total	\$850.00
Less retained security deposit (No interest due)	200.00
TOTAL	\$650.00

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 tenant.

In addition to authorization to retain the security deposit, the landlord is also issued with a Monetary Order for \$650,100.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any further damage or loss as may be ascertained at the conclusion of the tenancy.

October 1, 2010