

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 on August 6, 2010. The landlord also sought a Monetary Order for the unpaid rent and late fees, 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 20, 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 late fees, recovery of the filling fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

The landlord's agent gave evidence that the tenancy was current when her company took over management of the building, but that the tenant's account ledger indicated the tenancy began on August 1, 2003. Rent is currently \$779 per month and the landlord holds a security deposit of \$362.50 paid at the beginning of the tenancy. Although it was probably paid later, the landlord agreed that interest should be credited to January 31, 2003, the date on which the ledger first identifies the deposit.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had not paid \$798 due on August 1, 2010.

The landlord stated that the tenant did not pay the full amount within five days of receipt of the notice, and while much of the rent has been paid in the interim, the tenant still carries a rent shortfall of \$588. As the account has frequently been in arrears, the landlord seeks the Order of Possession.

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 full rent within five days of receiving the notice.

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 16, 2010.

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, late fee, 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 shortfall	\$588.00
Late fee	20.00
Filing fee	<u>50.00</u>
Sub total	\$658.00
Less retained security deposit	- 362.50
Less interest	- 12.83
TOTAL	\$282.67

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 **\$282.67** 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 6, 2010