

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlords on September 20, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on September 4, 2010. The landlords also sought a Monetary Order for the unpaid rent.

This matter was dealt with as a Direct Request proceeding on October 5, 2010 but was adjourned to the present participatory hearing due to a need to clarify the amount of rent unpaid.

As this is now a participatory hearing, as authorized under section 64(3)(c), I have amended the landlords' application to include a request for authorization to retain the security deposit in set off against the balance owed and recovery of the filing fee for this proceeding, items not permitted on a Direct Request proceeding.

Despite having been served with the notice of the present participatory hearing sent by registered mail on October 14, 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 now requires a decision on whether the landlords are entitled to an Order of Possession and 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.

Background and Evidence

This tenancy began on November 1, 2009. Rent is \$1,150 per month and the landlords hold a security deposit of \$575 paid on November 1, 2009.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of September 4, 2010 had been served when the tenant had a rent shortfall from August of \$250 and had not paid the rent for September 2010.

In the interim, those amounts remain unpaid, the tenant remains in the rental unit and has not paid rent for October or November 2010.

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 tenant did not make application to dispute the notice and I accept the evidence of the landlord that she 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 effective date under the Notice to End Tenancy which, taking into account three days deemed service for posted notice would have been September 17, 2010.

Therefore, I find that the landlords are entitled to an Order of Possession to take effect 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 the retain the security deposit in set off, the tenant owes the landlords an amount calculated as follows:

Rent shortfall for August 2010	\$ 250.00
Rent for September 2010	1,150.00
Rent for October 2010	1,150.00
Rent/loss of rent for November 2010	1,150.00
Filing fee	50.00
Sub total	\$3,750.00
Less retained security deposit (No interest due)	- 575.00
TOTAL	\$3,175.00

Conclusion

The landlords' 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.

Also, in addition to authorization to retain the security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$3,175.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

November 4, 2010