

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on October 8, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on September 2, 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 October 10, 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, recovery of the filling fee for this proceeding and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on April 1, 2009. Rent is \$600 per month and the landlord holds a security deposit of \$300 paid on April 1, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of September 2, 2010 had been served when the tenant had not paid the rent for August or September 2010.

In the interim, the tenant did pay rent for October and November, but the rents for August and September remained outstanding.

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 was September 12, 2010.

Therefore, I find that the landlord is 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 landlord an amount calculated as follows:

Rent for August 2010	\$ 600.00
Rent for September 2010	600.00
Filing fee	<u>50.00</u>
Sub total	\$1,250.00
Less retained security deposit (No interest due)	<u>- 300.00</u>
TOTAL	\$ 950.00

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 **\$950.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

November 5, 2010