

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 October 2, 2010. The landlord also sought a Monetary Order for 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 served in person on October 12, 2010, 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 landlord advised that the tenants had vacated the rental unit on October 13, 2010 - although one key had not been returned - and amended her application accordingly.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent, recovery of the filling fee for this proceeding, authorization to retain the security deposit in set off, and authorization to change the locks.

Background and Evidence

This tenancy began on August 3, 2010. Rent was \$750 per month and the landlord held a security deposit of \$375 paid at the beginning of the tenancy. As a matter of note, the tenants had each paid half of the security deposit. One of the tenants had twice withdrawn \$20 on the deposit and the balance of the one-half had been returned to her at the end of the tenancy. At the time of the hearing, \$187.50 of the deposit remained. As I find that this is a co-tenancy, and any charge granted against the security deposit is effective against the tenants jointly and severally.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 2, 2010 had been served when the tenants had not paid the rent due October 1, 2010.

The landlord stated that the tenants had vacated the rental unit on October 13, 2010 and simply seeks a monetary award of \$280, an amount less than the per diem for the 13 days the tenants occupied the rental unit in October.

The landlord further noted that one of the tenants had not returned a key and seeks authorization to change the locks.

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 effective date under the Notice to End Tenancy which was October 13, 2010.

Consequently, I find that the tenancy ended on October 13, 2010 and I hereby authorize and order that the landlord has possession of the rental unit and that she is at liberty to change the locks.

I further find that , including rent, recovery of the filing fee for this proceeding and authorization to the retain the remaining security deposit in set off, the tenants owe the landlord an additional amount calculated as follows:

Rent for October 1 to October 13, 2010	\$280.00
Filing fee	<u>50.00</u>
Sub total	\$330.00
Less retained balance of the security deposit (No interest due)	- 187.50
TOTAL	\$ 142.50

Conclusion

In addition to authorization to retain the security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$142.50**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

November 5, 2010