

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on October 21, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on October 6, 2010. The landlord also sought a Monetary Order for the unpaid rent. In addition, as authorized by section 64(3) of the *Act*, I have amended the application to include a request for authorization to retain the security deposit in set off against any balance found to be owed and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on October 23, 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 now 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 against the balance owed.

Background and Evidence

This tenancy began on May 1, 2010. Rent is \$1,100 per month and the landlord holds a security deposit of \$550 paid on or about May 1, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 6, 2010 had been served when the tenant had failed to pay the rent for September and October 2010.

In the interim, those amounts remain unpaid, the tenant remains in the rental unit and has not paid rent for 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 he 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 October 19, 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 retain the security deposit in set off against the balance, the tenant owes the landlord an amount calculated as follows:

Rent for September 2010	\$1,100.00
Rent for October 2010	1,100.00
Rent for November 2010	1,100.00
Filing fee	50.00
Sub total	\$3,350.00
Less retained security deposit (No interest due)	- 550.00
TOTAL	\$2,800.00

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.

Also, in addition to authorization to retain the security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$2,800.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

November 18, 2010