

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on October 19, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on October 19, 2010 by posting on the tenants' door. The landlords 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.

Despite having been served with the Notice of Hearing sent by registered mail on October 19, 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.

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 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 May 1, 2010. Rent is \$650 per month and the landlord holds a security deposit of \$350 paid on or about May 1, 2010.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of October 9, 2010 had been served when the tenants had a rent shortfall from September 2010 of \$150 and had not paid the rent for October 2010.

In the interim, the tenants remain in the rental unit and they have not paid the 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 tenants 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 outstanding rent within five days of receipt of the notice and, in fact, have paid none of the outstanding rent to the date of the hearing.

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, taking into account three days deemed service for posted notice would have been October 22, 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, the tenants owe the landlord an amount calculated as follows:

Rent shortfall for September 2010	\$ 150.00
Rent for October 2010	650.00
Rent for November 2010	650.00
Filing fee	<u>50.00</u>
Sub total	\$1500.00
Less retained security deposit (No interest due)	<u>- 350.00</u>
TOTAL	\$1,150.00

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 **\$1,150.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

November 15, 2010