

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on November 24, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on November 11, 2010 in person. The landlord also sought a Monetary Order for the unpaid rent/loss of rent, late fees, 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 November 24, 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/loss of rent, late fees, 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 April 1, 2010. Rent is \$1,090 per month and the landlord holds a security deposit of \$545 paid on or about April 1, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 11, 2010 had been served when the tenant had failed to pay rent for November and had a shortfall from October of \$25.14, of which \$25 was an unpaid late fee.

In the interim, the tenant has not given notice and has not paid the rent for December.

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 they 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 November 21, 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, loss of rent, late fees, recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off, the tenant owes the landlord an amount calculated as follows:

Rent, late fee for October 2010	\$ 25.14
Rent for November 2010	1,090.00
Late fee for November	25.00
Rent/loss of rent for December 2010	1,090.00
Filing fee	50.00
Sub total	\$2,280.14
Less retained security deposit	- 545.00
TOTAL	\$1,735.14

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.

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is also accompanied by a Monetary Order for **\$1,735.14**, enforceable through the Provincial Court of British Columbia, for service on the tenant..

December 13, 2010