

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on November 30, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on November 23, 2010 in person. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* and permitted the landlord to amend the application to include a request for authorization to retain the security deposit in set off against the balance owed.

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 June 1, 2009. Rent is \$1,150 per month and the landlord holds a security deposit of \$575 paid on or about June 1, 2009.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy of November 23, 2010 had been served when the tenants had failed to pay rent for October and November 2010.

In the interim, the tenants have remained in the rental unit and have not paid the rent for December 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 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, as automatically corrected under the *Act*, was December 3, 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 tenants.

I further find that including 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 for October 2010	\$1,150.00
Rent for November 2010	1,150.00
Rent for December 2010	1,150.00
Filing fee	50.00
Sub total	\$3,500.00
Less retained security deposit (No interest due)	- 575.00
TOTAL	\$2,925.00

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.

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 **\$2,925.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

December 17, 2010