

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on December 1, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on November 16, 2010 by posting on the tenants' door. The landlord 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 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 April 1, 2005. Rent is \$587.14 per month and the landlord holds a security deposit of \$250 paid on March 15, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 16, 2010 had been served when the tenants had failed to pay rent for November. In the interim, the tenants have not paid the rent for December 2010.

The tenant gave evidence that he had been unaware of the rent arrears as he had relocated to Saskatchewan and that his co-tenant, his sister, had been hospitalized, was currently in treatment, he did not expect that she would return to the rental unit.

The tenant acknowledged that he understood that he shared joint and several liability as a signatory to the current rental agreement.

The parties shared information with respect to the disposition of property remaining in the rental unit.

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 tenants are conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was November 29, 2010 taking into account the three days deemed service time for notice served by posting..

As the tenant did not contest possession of the unoccupied rental unit, I find it in the best interest of both parties that the landlord have an Order of Possession effective at 1 p.m. December 17, 2010 to facilitate the earliest preparation for new tenants and minimize the potential loss of rent.

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 for November 2010	\$ 587.14
Rent for December 2010	587.14
Filing fee	50.00
Sub total	\$1,224.28
Less retained security deposit	- 250.00
Less interest (March 15, 2005 to date)	- 8.84
TOTAL	\$ 965.44

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 at 1 p.m. on December 17, 2010.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$965.44**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

December 17, 2010