

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlords on November 1, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on October 3, 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 against the balance owed.

As a matter of note, this tenancy was addressed in Direct Request proceedings on October 22, 2010 and on November 5, 2010 under different file numbers but was dismissed on both occasions on questions of service.

Despite having been served with the notice of the present participatory hearing sent by registered mail on November 9, 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 landlords are 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 August 26, 2010. Rent is \$1,500 per month and the landlord holds a security deposit of \$1,500 paid on August 26, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 3, 2010 had been served when the tenants had failed to pay rent for October. The landlord stated that the tenants had also failed to pay the rent for September, but that the security deposit had been applied to that. Therefore, the security deposit is no longer available for set off.

In the interim, the tenants remain in the rental unit and have not paid rent for November or 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, taking into account three days deemed service for posted notice would have been October 16, 2010.

Therefore, I find that the landlords are entitled to an Order of Possession to take effect two days from service of it on the tenants.

I further find that , including rent, recovery of the filing fee for this proceeding, the tenants owe the landlords an amount calculated as follows:

Rent for October 2010	\$1,500.00
Rent for November 2010	1,500.00
Rent/loss of rent for December 2010	1,500.00
Filing fee	<u>50.00</u>
TOTAL	\$4,550.00

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.

The landlords' copy of this decision is also accompanied by a Monetary Order for **\$4,550.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remain at liberty to make application for any further damage or losses as may be ascertained at the conclusion of the tenancy.

December 2, 2010