

DECISION

Dispute Codes: OPC, MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a one- month Notice to End Tenancy for cause served on November 27, 2011, recovery of the filing fee for this proceeding and authorization to retain the security deposit. In addition, as authorized under section 64(3)(c) of the *Act*, I have permitted the landlord to amend the application to include a claim for unpaid rent.

Despite having been served with the Notice of Hearing served in person on January 7, 2011, 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 and recovery of the filing fee, and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy in the landlord's basement suite began on October 15, 2010. Rent is \$675 per month and the landlord holds a security deposit of \$337.50 paid on November 4, 2011.

During the hearing, the landlord stated that the Notice to End Tenancy of November 27, 2010 was served when the landlord learned that the tenants had two pets, a cat and a dog, which was a breach of a material term of the rental agreement.

The landlord stated that while the Notice to End Tenancy had set an end of tenancy date at the end of December 2010, the tenants remain in the rental unit and they have paid only half of the rent for January and asked the landlord take the remainder from the security deposit.

The landlord stated that she had initially requested authorization to retain the security deposit on the grounds of anticipated damage to the rental unit. However, when she was advised that she cannot make a claim for damage to the rental unit until the damages have been identified and documented, she asked for authorization to retain the security deposit in set off against the unpaid half of the January rent.

Analysis

Section 47(1)(h) of the *Act* provides that a landlord may issue a one month Notice to End Tenancy for breach of a material term of the rental agreement. Tenants may make application to contest a Notice to End Tenancy for cause within 10 days of receiving it or, under section 47(5), they are conclusively presumed to have accepted that the tenancy ends on the date specified in the Notice.

In this matter, the tenants have not made application to challenge the notice and they are, therefore, over holding.

Accordingly, 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 the landlord is entitled to retain the security deposit in set off against the unpaid rent for January 2011 which fully satisfies the January rent.

As the landlord's application has succeeded, I find that he is entitled to recover the filing fee for this proceeding from the tenants and issue a Monetary Order for \$50 for that purpose.

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.

In addition to authorization to retain the security deposit to satisfy the January rent, the landlord is also issued with a Monetary Order for **\$50.00** enforceable through the Provincial Court of British Columbia, for service on the tenants to recover the filing fee for this proceeding.

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

January 24, 2011