

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on March 9, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on February 18, 2011. The landlord also sought a Monetary Order for the unpaid rent for February and March 2011, an NSF fee for February 2011, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

Despite having been served with the Notice of Hearing in person on March 11, 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 landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent, NSF fee, 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 October 1, 2010. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid on October 1, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenants' February rent cheque had been returned NSF. The landlord also served the tenants with a letter of caution about repeated late rent

payment and an explanation that they could extinguish the Notice to End Tenancy by paying the rent within five days.

In the interim, the February rent remains unpaid and the tenants have not paid rent for March 2011.

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 was March 1, 2011.

Therefore, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that tenants owe the landlord an amount calculated as follows:

Rent for February 2011	\$1,200.00
NSF Fee for February 2011	25.00
Rent for March 2011	1,200.00
Filing fee	<u>50.00</u>
Sub total	\$2,475.00
Less retained security deposit (no interest due)	<u>- 600.00</u>
TOTAL	\$1,875.00

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 tenants.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,875.0.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

March 24, 2010