

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on February 17, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on February 3, 2011. The landlord also sought a Monetary Order for the unpaid rent, late fees and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing served by registered mail on February 18, 2011, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her 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, late fee, 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 December 1, 2010. Rent is \$725 per month and the landlord holds a security deposit of \$362.50 paid on November 22, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of February 3, 2011 had been served when the tenant had failed to pay the rent due on February 1, 2011. The tenant also had \$20 outstanding from a previous overdue late fee and there was a late fee required for February of \$25..

The landlord stated that the tenant had paid \$770 on February 25, 2011, enough to satisfy the late fees and February rent, but paid too late to extinguish the Notice to End Tenancy of February 3, 2011. A receipt was issued for “use and occupancy” only indicating that the landlord did not intend to reinstate the tenancy.

The landlord stated that, at the time of the hearing, the tenant remained in the rental unit and that she had not paid the rent for March 2011. Therefore, the landlord requested the Order of Possession and a Monetary Order for the March rent and late fee.

Analysis

Section 26 of the *Act* provides that a tenant 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 she did not pay the full rent within five days of receiving the notice.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was February 13, 2011.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that, including rent, late fee, and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, the tenant owes the landlord an amount calculated as follows:

Rent for March 2011	\$725.00
Late fee	25.00
Filing fee	50.00
Sub total	\$800.00
Less retained security deposit (no interest due)	- 362.50
TOTAL	\$437.50

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.

The landlord is also issued with a Monetary Order for **\$437.50**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 4, 2011