

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on March 16, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid served by posting on the tenant's door on March 2, 2011 and setting an end of tenancy date of March 16, 2011. 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.

Despite having been served with the Notice of Hearing sent by registered mail on March 18, 2011, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 and filing fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on April 1, 2008. Rent is \$870 per month and the landlord holds a security deposit of \$412.50 paid on or about April 1, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of had been served when the tenant had failed to pay \$860 of the rent due on March 1, 2011 and noted that the tenant had begun the month with a \$10 credit carried forward from February 2011.

The landlord state that she believed the tenant was in the process of moving out of the rental unit at the time of the hearing..

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 he 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 March 16, 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 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 shortfall for March 2011	\$860.00
Filing fee	<u>50.00</u>
Sub total	\$910.00
Less retained security deposit	- 412.50
Less interest (April 1, 2008 to date)	- <u>4.65</u>
TOTAL	\$492.85

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.

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 \$492.85, enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 31, 2011