

DECISION

Dispute Codes: OPR, MNR and FF

Introduction

This application was brought by the landlord on March 3, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on January 29, 2011. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

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 recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on November 1, 2010. Rent is \$1,100 per month and the landlord's application states that the security deposit was not paid.

During the hearing, the landlord spouse and advocate gave evidence that the Notice to End Tenancy of January 29, 2011 had been served after the tenant had a rent shortfall for December 2010 of \$400 and had paid none of the \$1,100 rent due for January 1, 2011. In the interim, the tenant added a rent shortfall of \$296.17 for February 2011 and paid no rent for March 2011.

The tenant acknowledged the indebtedness and gave explanation that health challenges and interrupted employment had led to the unpaid rent.

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.

On the tenant's promise that she would voluntarily vacate on March 31, 2011, the landlord agreed to continue the tenancy to that date. Accordingly, I find that the landlord is entitled to an Order of Possession to take effect on March 31, 2011.

I further find that, including recovery of the filing fee for this proceeding, the tenant owes the landlord an amount calculated as follows:

December 2010 rent shortfall	\$ 400.00
January 2011 rent	1,100.00
February 2011 rent shortfall	269.17
March rent	1,100.00
Filing fee	50.00
TOTAL	\$2,919.17

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 at 1 p.m. on March 31, 2011.

The landlord is also issued with a Monetary Order for **\$2,919.17**, enforceable through the Provincial Court of British Columbia, for service on the tenant.