



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on March 15, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on March 2, 2011. The landlord also sought a Monetary Order for the unpaid rent, utilities, late/NSF fees, 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 17, 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 Monetary Order for the unpaid rent, utilities, late fees and recovery of the filing fee for this proceeding, and authorization to retain the security deposit.

Background and Evidence

This tenancy began on November 1, 2010 under a fixed term agreement set to end on October 31, 2011. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid in September 2010.

During the hearing, the landlord gave evidence that Notice to End Tenancy had been served when the tenants had failed to pay the rent due on March 1, 2011, and had an accumulating arrears beginning in December 2011.

In addition, the landlord claims unpaid utilities for which the tenants are responsible under the rental agreement and for which the landlord is billed if they are not paid. The landlord also claims six instances of late and/or NSF fees of \$25 each documented on the tenants' ledger submitted into evidence.

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 15, 2011.

Therefore, 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, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance, the tenants owe the landlord an amount calculated as follows:

Rent for December 2010	\$1,200.00
Rent for January 2011	1,200.00
Rent for March 2011	1,200.00
Rent/loss of rent for April 2011	1,200.00
Late, NSF fees: Dec., Jan., Feb., & March (6 @ \$25)	150.00
December utilities	39.32
January utilities	53.04

February utilities	38.24
Filing fee	<u>50.00</u>
Sub total	\$5,130.60
Less retained security deposit (No interest due)	- <u>600.00</u>
TOTAL	\$4,530.60

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 upon the tenants.

In addition to authorization to retain the security deposit in set off against the balance owed, the landlords' copy of this decision is also accompanied by a Monetary Order for \$4,530.60, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for damages ascertained at the conclusion of the tenancy.

April 5, 2011