



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 17, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on March 4, 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.

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, recovery of the filing fee for this proceeding, and authorization to retain the security deposit.

Background and Evidence

This tenancy began on November 20, 2010. Rent is \$600 per month and the landlord holds a security deposit of \$300 paid on November 20, 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 (half of which has since been paid), and had rent shortfalls of \$310 from February and \$55 from January 2011.

The female tenant stated that her half of the rent had been paid by automatic deposit and the shortfall resulted from non-payment by her co-tenant. However, as the landlord notice, this is a co-tenancy in which both parties are jointly and severally liable for the full rent.

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 the tenant attending did not contest the shortfall claimed by the landlord.

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 14, 2011.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on Saturday, April 16, 2011.

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 shortfall for January 2011	\$ 55.00
Rent shortfall for February 2011	310.00
Rent shortfall for March 2011	300.00
Filing fee	<u>50.00</u>
Sub total	\$715.00
Less retained security deposit (No interest due)	- <u>300.00</u>
TOTAL	\$415.00

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 at 1 p.m. on April 16, 2011.

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

\$415.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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

April 7, 2011