

DECISION

Dispute Codes: OPR, MNR, MND, MNSD, ET and FF

Introduction

This application was brought by the landlord on June 7, 2011 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on May 3, 2011. The landlord also sought a Monetary Order for the unpaid rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

The landlord also applied for an Order of Possession under section 56 of the *Act*, an Order possible in circumstances in which it would be unreasonable to await a proceeding to end the tenancy for cause. That part of the application is dismissed as both redundant and not applicable under the present circumstances.

In addition, as the tenancy has not yet ended and as the landlord has submitted no evidence in support of a claim for damage to the rental unit, that part of the claim is dismissed.

Similarly, while the tenant was part of a former co-tenancy with his estranged spouse, she is not a signatory to the present rental agreement. Though she now occupies the rental unit and the named tenant has moved, her name is removed from the style of cause.

Despite having been served with the Notice of Hearing served in person on June 11, 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 now requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filling fee for this proceeding, and authorization to retain the security deposit in set off.

Background and Evidence

The present tenancy began on April 1, 2011. Rent is \$700 per month and the landlord olds a security deposit of \$300, carried over from the previous tenancy. While the

landlord did not have the exact date of payment of the deposit, he stated that it was not sooner than January 1, 2005 and accepts that date for the purpose of calculating interest.

During the hearing, the landlord gave evidence that, while the tenant has moved, his estranged spouse remains in the rental unit.

The landlord stated that the Notice to End Tenancy of May 3, 2011 had been served after the tenant had failed to pay the rent due on May 1, 2011. While the May rent was subsequently paid during the last week of May, the landlord issued a receipt "for use and occupancy only" indicating that acceptance did not reinstate the tenancy. In the interim, the tenant has not paid rent for June 2011.

Therefore, the landlord seeks the Order of Possession and a Monetary Order for the June rent and filing fee and authorization to retain the security deposit in set off.

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 before me that the rent was not paid within five days of receipt of 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 May 13, 2011.

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

I further find that the landlord is entitled to a Monetary Order for the unpaid rent.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant and authorization to retain the security deposit in set off. The Monetary Order is calculated as follows:

Rent for June 2011	\$700.00
Filing fee	50.00
Sub total	\$750.00
Less retained security	- 300.00
Less interest (January 1, 2005 to date)	- 10.61
TOTAL	\$ 439.39

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.

In addition to authorization to retain the tenant's security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$439.39**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 29, 2010