

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

By application of July 27, 2011, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on July 5, 2011 and a Monetary Order for the unpaid rent and filing fee and authorization to retain the security deposit in set off against the balance.

As a matter of note, the landlord amended her application remove the name of two tenants, and added one to name two parties in total, only one of whom appeared on the original rental agreement.

By way of explanation, the landlord noted that her property management firm had taken over management of the rental unit in July 2011. She stated that she has confirmed that the two parties named have been the only occupants of the rental unit in that time. She stated that the several months' difference between payment of the security deposit and beginning of the tenancy appears to have resulted from one or more changes among the tenants during that period.

Despite having been served with the Notice of Hearing sent by registered mail on July 29, 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 dispute requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as claimed.

Background and Evidence

This tenancy began on February 1, 2008. Rent is \$900 per month and the landlord holds a security deposit of \$450 paid on July 26, 2007.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of July 5, 2011 had been served after the tenants had failed to pay the full rent due on July 1, 2011. In the interim the landlord stated that the rent due August 1, 2011 had not been paid and the tenants remain in the rental unit.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any alleged non-compliance of the landlord with the legislation or rental agreement, for which other remedies are available.

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 and the July and August rents remain unpaid.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was July 15, 2011. Accordingly, 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, recovery of the filing fee for this proceed and authorization to retain the security deposit in set off, calculated as follows:

Rent for July 2011	\$ 900.00
Rent for August 2011	900.00

Filing fee	50.00
Sub total	\$1,850.00
Less retained security deposit	- 450.00
Less interest (July 27, 2007 to date	- 9.74
TOTAL balance remaining owed	\$1,390.26

.

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 security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for \$1,390.26, enforceable through the Provincial Court of British Columbia, for service on the tenant.

August 29, 2011