

DECISION

Dispute Codes: OPR, MNR, MNDC, 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 on May 7, 2011 and a Monetary Order for the unpaid rent, loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

At the commencement of the hearing, the landlord advised that the tenants had vacated the rental unit on August 8, 2011 and that the Order of Possession was no longer required.

Despite having been served with the Notice of Hearing sent by courier 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 a Monetary Order for the unpaid rent, loss of rent and filing fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on March 1, 2011 under a one year fixed term agreement. In exchange for having signed a one-year agreement, the tenants' rent was reduced from \$1,100 per month to \$1,008. The landlord holds a security deposit of \$550 paid on February 25, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of May 7, 2011 had been served after the tenants had a rent shortfall of \$725 on the rent due May 1, 2011.

In the interim, the tenants failed to pay the \$1,008 rent due for June, July and August 2011. The landlord gave evidence that new tenants have been found starting September 1, 2011.

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 tenants 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 all of the rent claimed remains 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 May 20, 2011.

Accordingly, I find that the landlord is entitled to a Monetary Order for the unpaid rent/loss of rent, recovery of the filing fee for this proceed and authorization to retain the security deposit in set off, calculated as follows:

Rent shortfall for May 2011	\$ 725.00
Rent for June 2011	1,008.00
Rent for July 2011	1,008.00

Rent/loss of rent for August 2011	1,008.00
Filing fee	50.00
Sub total	\$3,799.00
Less retained security deposit (No interest due)	- 550.00
TOTAL balance remaining owed	\$3,249.00

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Conclusion

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 \$3,249.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

August 29, 2011