

DECISION

Dispute Codes: Landlord: OPR and MNR
 Tenants: CNR

Introduction

Both the landlord and the tenants have made applications with respect to a 10-day Notice to End Tenancy for unpaid rent served in person on August 2, 2011.

By application received on August 9, 2011, the landlord seeks an Order of Possession to uphold the notice and a Monetary Order for unpaid rent. A claim for utilities was withdrawn. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend his application to request recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application received on August 8, 2011, the tenants seek to have the notice set aside and note that the landlord has not credited them for services rendered in yard improvements and maintenance.

Despite having made application which was scheduled to be heard together with the landlord's application for which they were served with a Notice of Hearing in person on August 10, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing.

Therefore, the tenants' application is dismissed without leave to reapply and the hearing proceeded on the landlord's application.

Issues to be Decided

This dispute now requires a decision on whether the landlord is entitled to an Order of Possession, a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found to be owed.

Background and Evidence

This tenancy began on November 1, 2009. Rent is \$1,650 per month and the landlord initially held a security deposit of \$1,000 paid on October 18, 2011. The landlord stated that the tenant had been credited with \$175 against rent when the parties learned that the deposit should not exceed one-half of one month's rent.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of August 2, 2011 had been served after the tenants had a rent shortfall from July of \$1,170 and had not paid the rent \$1,650 rent due on August 1, 2011.

In the interim, the tenants remain in the rental unit, the arrears remains unpaid and the tenants have not paid the rent for September 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 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 make application is dismissed on their failure to appear, and rent was not paid within five days of receipt of the Notice to End Tenancy of August 2, 2011.

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

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed, calculated as follows:

July 2011 rent shortfall	\$1,120.00
August 2011 rent	1,650.00
September 2011 rent	1,650.00
Filing fee	<u>50.00</u>
Sub total	\$4,470.00
Less retained security deposit (no interest due)	<u>- 825.00</u>
TOTAL	\$3,645.00

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 two days from service of it on the tenants.

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 \$3,645.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

September 9, 2011