

DECISION

Dispute Codes: OPR, OPC, MNR, MNDC, MNSD and FF

Introduction

By application of August 5, 2011, the landlords sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on June 19, 2011 and a Monetary Order for the unpaid rent.

Despite having been served with the Notice of Hearing sent by registered mail on August 11, 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 for the unpaid rent.

Background and Evidence

This tenancy began on March 8, 2011. Rent is \$1,150 per month and the security deposit, agreed to in the rental agreement, was not paid.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of June 19, 2011 had been served after the tenants had a rent shortfall of \$800 on the rent due June 1, 2011. In the interim, the tenants did not pay any of the rent due on July 1, 2011 following which the landlord served an additional Notice to End Tenancy for cause (repeated late payment of rent.) on July 1, 2011.

Again, in August, the tenants did not pay the rent on August 1, 2011 but made payments of \$1,000 on each of August 9, 2011 and August 27, 2011 toward the arrears. The landlord stated that it was made abundantly clear to the tenants that acceptance of the partial payment of the arrears did not reinstate the tenancy.

The landlord stated that the tenants remain in the rental unit but they have paid no 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 not make application and rent was not paid within five days of receipt of the Notice to End Tenancy of June 19, 2011.

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 June 30, 2011. Accordingly, I find that the landlords are 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, calculated as follows:

June 2011 rent shortfall	\$ 800.00
July 2011 rent	1,150.00
August 2011 rent	1,150.00
September 2011 rent	1,150.00
Filing fee	<u>50.00</u>
Sub total	\$4,300.00
Less 2 x \$1,000 payments made August 9 th & 27 th .	<u>2,000.00</u>
TOTAL	\$2,300.00

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 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 \$2,300.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

September 9, 2011