

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

By application of August 24, 2011, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on August 9, 2011 and a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit amendment of the landlord's application to include a request for authorization to retain the security deposit in set off against the balance owed.

I have further permitted the landlord to amend her application to include May 2011 and September 2011 in the claim for unpaid rent. The former was omitted in error on the application but is substantiated by a statement of the tenant's account submitted into evidence and also served on the tenant by registered mail. The landlord's application preceded the September rent due date and the need to include it was not known at the time.

Despite having been served with the Notice of Hearing sent by registered mail on August 26, 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 dispute requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent and recovery of the filing fee, and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on June 1, 2010. Rent is \$900 per month plus \$35 for parking and the landlord holds a security deposit of \$450 paid on June 1, 2010.

During the hearing, the landlord gave evidence that her property management firm had assumed responsibility for the rental building in April 2011 leading to some delay in addressing overdue accounts.

The landlord stated that the Notice to End Tenancy of August 9, 2011 had been served after the tenant failed to pay rent and parking for May, June, July and August of 2011. In the interim, the tenant has not paid the \$900 rent or \$35 parking for September 2011 and remains in the rental unit.

Therefore, the landlord requests the Order of Possession and Monetary Order.

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 tenant did not make application and rent was not paid within five days of receipt of the Notice to End Tenancy of August 9, 2011.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was August 22, 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 and parking, recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off, calculated as follows:

May 2011 rent and parking	\$ 935.00
June 2011 rent and parking	935.00
July 2011 rent and parking	935.00
August 2011 rent and parking	935.00
September 2011 rent and parking	935.00
Filing fee	50.00
Sub total	\$4,725.00
Less retained security deposit (No interest due)	- 450.00
TOTAL	\$4,275.00

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 **\$4,275.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

September 28, 2011