

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 2, 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.

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 July 1, 2008. Rent is \$1,160.70 per month including parking, and the landlord holds a security deposit of \$550 paid on June 27, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of August 2, 2011 had been served after the tenant had a rent shortfall of \$530.77 on the rent due August 1, 2011.

In the interim, the tenant has not paid any of the rent due on September 1, 2011. The landlord stated that the tenant remains 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 tenant did not make application and rent was not paid within five days of receipt of the Notice to End Tenancy of August 2, 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 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 and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off, calculated as follows:

August 2011 rent shortfall	\$ 530.77
September 2011 rent	1,160.70
Filing fee	<u>50.00</u>
Sub total	\$1,741.47
Less retained security deposit	- 550.00
Less interest (June 26, 2008 to date)	- <u>4.24</u>
TOTAL	\$1,187.23

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 \$1,187.23, enforceable through the Provincial Court of British Columbia, for service on the tenant.

September 26, 2011