

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

By application of August 24, 2011, the landlord initially 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.

At the commencement of the hearing the landlord advised that the tenant was deceased on July 7, 2009 as confirmed by a letter from his mother dated August 12, 2011 adding that the rental unit would be vacated by August 31, 2011 and providing her address for contact. The landlord confirmed that the tenant's property had been removed from the rental unit and that the Order of Possession was no longer required. In addition, I have amended the style of cause to name the estate of the late tenant as respondent.

Despite having been served with the Notice of Hearing sent by registered mail on August 27, 2011 to the tenant's mother, no representative of the tenant's estate called 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 unpaid rent for August 2011, 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 March 1, 1998. Rent was \$859.40 per month and the landlord holds a security deposit of \$342.50 paid on February 2, 1998.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of August 2, 2011 had been served when the landlord had not received the rent for August 2011 due on the first.

She stated that she had posted the Notice to End Tenancy on the tenant's door and that she had provided a copy to the tenant's mother in person.

Analysis

Given that the landlord did not obtain possession of the rental unit until mid-to late August, I find that the estate of the late tenant is responsible for the rent for August 2011.

I further find that the landlord is entitled to retain the tenant's security deposit and interest in set off against the balance owed and to recover the filing fee for this proceeding.

Thus, I find that the landlord is entitled to claim against the tenant's estate as follows:

August 2011 rent	\$859.40
Filing fee	50.00
Sub total	\$909.40
Less retained security deposit	- 342.50
Less interest (February 2, 1998 to date)	- 43.68
TOTAL	\$523.22

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 \$523.22, enforceable through the Provincial Court of British Columbia, for service on the estate of the tenant.

September 26, 2011