

DECISION

Dispute Codes: OPC, MNR an MNSD

Introduction

This application was brought by the landlord on September 2, 2011 seeking an Order of Possession pursuant to a one-month Notice to End Tenancy for cause served on July 19, 2011 and setting an end of tenancy date of August 31, 2011. The notice cited repeated late payment of rent and breach of a material term of the rental agreement as causes.

The landlord also sought a Monetary Order for unpaid and, at his request I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to include a claim to retain part of the security deposit in set off.

Despite having been served with the Notice of Hearing in person on September 3, 2011, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. It proceeded in her absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession as requested, a monetary order for unpaid rent and authorization to retain part of the security deposit in set off.

Background and Evidence

This tenancy began on August 15, 2008. The tenant's share of rent is \$261 per month and the landlord holds a security deposit of \$500 paid on August 15, 2008.

During the hearing, the landlord submitted evidence that, after the tenant had been frequently late paying rent throughout the tenancy including February and March of 2011, she was served with a warning letter on March 3, 2011 detailing the late payments and warning that further late payments would result in a Notice to End Tenancy.

The tenant was subsequently late paying rent for July and August 2011, and at the time of the hearing, the September rent had not been paid.

The tenant had also been served with warning letters for having an unauthorized cat and for leaving excess newspapers, which she delivered, outside her door that were at times windblown around the property.

The landlord gave further evidence that when he attended the rental unit to conduct a scheduled move-out condition inspection on August 31, 2011, the tenant appeared to be home but would not answer the door. He stated that at the time of the hearing on September 30, 2011, the tenant continued to occupy the rental unit.

Analysis

Section 47(1)(b) of the *Act* provides that a landlord may issue a one-month notice to end tenancy for cause if a tenant is repeatedly late paying rent. As a matter of practice, three late payments within twelve months are considered to establish repeated late payment.

In the present matter, I find that the tenant's rent was late on at least four occasions in 2011 and three times after receipt of the warning letter in March.

Section 47(5) of the *Act* states that, if a tenant who receives a notice to end tenancy for cause does not make application to contest the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was August 31, 2011.

As the subject tenant did not make application to contest the notice to end tenancy and has not vacated, I find that she is overholding the rental unit.

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

I further find that the landlord is entitled to retain the \$261 rent for September 2011 from the tenant's \$500 plus interest security deposit. The balance of the deposit remains to be disposed of in compliance of section 38 of the *Act*.

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.

The landlord is authorized to retain \$261 of the tenant's security deposit to cover unpaid rent for September 2011.

The landlord remains at liberty to make application for any further damage or losses as may be ascertained when the rental unit is vacated.

September 30, 2011