

DECISION

Dispute Codes OPR, MNR, MNSD and FF

This application was brought by the landlord on December 16, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid served by posting on the tenant's door on December 6, 2011. The landlord also sought a Monetary Order for the unpaid rent.

This matter was originally address as a Direct Request Proceeding on December 21, 2011 on written submissions only; however, it was adjourned to the present participatory hearing because of need for clarification of the monetary claim. As the application was adjourned to a participatory hearing, I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to include a request 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 December 30, 2011, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on May 1, 2011. Rent is \$1,500 per month and the landlord holds a security deposit of \$750.

During the hearing, the landlord gave evidence, supported by copies of dishonoured cheques and cheques in lesser amounts than the rent and a detailed diarizing of late and unpaid rent from August of 2011 to December 2011, a month in which the \$1,500 due on the first of the month was not paid until December 24, 2011.

The landlord stated that the tenant had given a money order for the January 2012 rent on January 6, 2012 which the landlord did not redeem for fear of reinstating the tenancy. She was advised that she could deposit the money order provided she issued the tenant with a receipt indicating the payment was accepted "for use and occupancy only."

At present, the landlord claims an accumulated rent arrears including a \$200 rent shortfall for August 2011, a \$1,300 shortfall for September 2011, and a rent shortfall of \$850 for November of 2011.

As noted, the Notice to End Tenancy was served on December 6, 2011 when the tenant had failed to pay the rent due on the first, although it was subsequently paid on December 24, 2011.

Despite having been served with the Notice to End Tenancy, the tenant remains in the rental unit as of the hearing date of January 10, 2012.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

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 pay the rent within five days of receiving the notice and did not make application to dispute it.

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 to End Tenancy which was December 19, 2011, taking into account that it is a 10-day notice and service by posting is deemed to have been received three days later.

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, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed, calculated as follows:

Rent shortfall for August 2011	\$ 200.00
Rent shortfall for November 2011	850.00
Filing fee	<u>50.00</u>
Sub total	\$2,400.00
Less retained security deposit (No interest due)	<u>- 750.00</u>
TOTAL	\$1,650.00

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 accompanied by a Monetary Order for \$1,650.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 10, 2012.

Residential Tenancy Branch