

DECISION

Dispute Codes OPR, MNR, MNSD and FF

This application was brought by the landlord on December 23, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenants' door on December 8, 2011. The landlord also sought a Monetary Order for the filing fee for this proceeding but not for the unpaid rent.

Despite having been served with the Notice of Hearing sent by registered mail on December 30, 2011, neither the tenants nor their guarantor called in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

At the commencement of the hearing, the landlord advised that she had not specified the claim for unpaid rent on the original application as she was not aware of when the hearing would occur and the final amount that would be owed.

As that amount is now known, and as it would be self evident to tenants that the landlord would be seeking the unpaid rent, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend the application to claim the unpaid rent and authorization to retain the security deposit in set off.

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 July 1, 2011 under a one-year fixed term agreement. Rent is \$2,500 per month and the landlord holds a security deposit of \$1,250 paid on or about the beginning of the tenancy.

During the hearing, the landlord gave evidence, supported by the tenants' account ledger, that the Notice to End Tenancy of December 7, 2011 had been served on December 8, 2011 when the tenants had failed to pay the rent due on December 1, 2011. The notice cited arrears of \$2,550, but the landlord withdrew \$50, the portion for late fees and NSF fees.

The landlord gave evidence that the tenants had made a payment of \$1,000 on December 13, 2011, leaving an unpaid balance of \$1,500.

In the interim, the tenants have not paid the rent for January 2012, and a payment of \$1,400 paid on January 6, 2012 was applied to the December rent.

The tenants remained in the rental unit at the time of the hearing on January 16, 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 tenants 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 tenants did not pay the full rent within five days of receiving the notice and they did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was December 21, 2011 taking into account the three days for deemed service of documents served by posting..

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and loss of rent.

In addition, I find that the landlord is entitled to recover the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed as provided at section 72 of the *Act*. .

The monetary award is calculated as follows:

Amount due to landlord		
Rent /loss of rent for January 2012	2,500.00	
Filing fee	<u>50.00</u>	
Sub total	\$5,050.0	\$5,050.00
Tenants' credits		
Less payment made on December 13, 2012	\$ 1,000.00	
Less payment made on January 6, 2012	1,400.00	
Less retained security deposit (No interest due)	<u>1,250.00</u>	
Sub total	\$3,650.00	<u>- 3,650.00</u>
TOTAL Monetary Order for balance		\$1,400.00

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 tenants.

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 \$1,400.00, enforceable through the Provincial Court of British Columbia, for service on the tenants and guarantor.

The landlord remains at liberty to make application for any damages as may be ascertained at the conclusion of the tenancy.

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 16, 2012.

Residential Tenancy Branch