

DECISION

Dispute Codes: MNR and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on September 9, 2009. The landlord also sought 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 against the balance owed.

Despite having been served with the Notice of Hearing served by registered mail on September 21, 2009, 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 application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filing fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on May 1, 2009. Rent is \$1,200 per month, although the landlord reduced the rent to \$1,000 per month for July, August and September of 2009 due to use of part of the rental unit having been restricted because of a water leak from the unit above. While the matter was remedied on September 2, 2009, the landlord included that whole month in the rent reduction.

The landlord holds a security deposit of \$600 paid on May 1, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served after the tenant had failed to pay rent for July, August, September of 2009. In the interim, the tenant has not paid rent for October or November.

Analysis

Section 46 of the *Act*, which deals with notice to end tenancy for unpaid rent, provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. Otherwise, the tenant is conclusively presumed to have accepted that the tenancy ends on the date set out in the notice which was September 19, 2009.

In this instance, I find that the tenant has not made application to dispute the Notice to End, the rent arrears was not paid within five days of receipt of the notice and the rent shortfall grew in October and November.

Therefore, the landlord requested, and I find he is entitled to, an Order of Possession effective two days from service of it upon the tenant.

I further find that the landlord is entitled to recover the unpaid rent and filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed, calculated as follows:

July rent	\$1,000.00
August rent	1,000.00
September rent	1,000.00
October rent	1,200.00
November rent/loss of rent	1,200.00
Filing fee	100.00
Sub total	\$5,500.00
Less retained security deposit	- 600.00
Interest due	- 0.00
TOTAL	\$4,900.00

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant and a Monetary Order for \$4,900.00.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia