

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlords on August 23, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on August 12, 2010 by posting on the tenant's door. The landlords also sought a Monetary Order for the unpaid rent.

At the commencement of the hearing, the landlords advised that the tenant had vacated the rental unit some time in September and withdrew the request for an Order of Possession.

This matter was dealt with as a Direct Request proceeding on September 9, 2010 but was adjourned to the present participatory hearing as the applicants had not stated the address of service as required on the Proof of Service of Direct Request Proceeding form. Nor was the address for service provided on the Canada Post registered mail form.

As this is now a participatory hearing, I have amended the landlords' application to include a request for authorization to retain the security deposit in set off against the balance owed and recovery of the filing fee for this proceeding, items not permitted on a Direct Request proceeding.

Despite having been served with the notice of the present participatory hearing served by posting on the tenant's and placement in her mail box on September 13, 2010, 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.

Issues to be Decided

This application now requires a decision on whether the landlords are entitled to a Monetary Order for the unpaid rent, recovery of the filling fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on March 1, 2010. Rent was \$1,200 per month and the landlords hold a security deposit of \$600 paid on March 1, 2010.

During the hearing, the landlords gave evidence that the Notice to End Tenancy of August 12, 1010 had been served when the tenant had not paid the \$1,200 rent that was due on August 1, 2010.

The tenant abandoned the rental unit in September without paying the August rent and failing to give notice or provide a forwarding address.

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 make application to dispute the notice and I accept the evidence of the landlord that she did not pay the full rent within five days of receiving the notice.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the date specified in the Notice to End Tenancy which was August 22, 2010, automatically corrected to August 24, 2010 to take into account the three days for deemed service of notice served by posting.

Having found full merit in the landlords' application, I find that they are entitled to recover the filing fee for this proceeding. I further find and order that the landlords may retain the tenant's security deposit in set off against the balance owed.

Thus, including rent, recovery of the filing fee and authorization to the retain the security deposit in set off, the tenant owes the landlords an amount calculated as follows:

Rent for August 2010	\$1,200.00
Filing fee	50.00
Sub total	1,250.00
Less retained security deposit (No interest due)	- 600.00
TOTAL	\$650.00

Conclusion

In addition to authorization to retain the security deposit, the landlords' copy of this decision is accompanied by a Monetary Order for **\$650.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

October 18, 2010