

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord on November 12, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on November 2, 2010 by posting on the tenants' door. The landlords also sought a Monetary Order for the unpaid rent, late fee, 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 the present participatory hearing sent by registered mail on November 16, 2010, the tenants did not call 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 the tenants had vacated the rental unit and that she no longer required the Order of Possession.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent, late fee, recovery of the filing 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 August 1, 2010 under a fixed term rental agreement set to end on July 31, 2011. Rent was \$850 per month and the landlord holds a security deposit of \$425 paid on August 1, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 3, 2010 had been served when the tenants had failed to pay rent for November 2010 and that the rent remained unpaid at the time of the hearing.

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

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which, taking into account three days deemed service for posted notice would have been November 15, 2010.

In addition to the November rent the landlord requested a \$25 late fee as prescribed by the rental agreement. I find that, including rent, late fee, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, the tenants owe the landlords an amount calculated as follows:

Rent for November 2010	\$850.00
Late fee	25.00
Filing fee	50.00
Sub total	\$925.00
Less retained security deposit (No interest due)	- 425.00
TOTAL	\$500.00

Conclusion

In addition to authorization to retain the security deposit in set off against the balance owed, the landlords' copy of this decision is also accompanied by a Monetary Order for **\$500.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

December 6, 2010