



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This application was brought by the landlord seeking a Monetary Order for unpaid rent, damages, cleaning and filling fee and authorization to retain the security deposit in set off against the balance owed.

As a preliminary matter, I wish to clarify an observation I made during the hearing in which I advised that British Columbia residential tenancy law does not permit a landlord to distrain the tenants' belongings. While that is correct, once the tenants have left the tenancy and the goods appear to have been abandoned, section 26 of the *Regulations* does permit the landlord to require reasonable costs of removing and storing the property and satisfaction of any amounts payable by the tenant to the landlord under the Act or tenancy agreement. Distraint occurs when goods are seized rather than abandoned.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to whether the landlord is entitled to a Monetary Order for the amounts claimed and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began April 15, 2008 under a fixed term agreement set to end on July 31, 2008. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on April 15, 2008.

While this tenancy was the subject of some concern to the landlord because of unauthorized extended guests and pets, and reports of loud fighting, those are not the subject of this dispute except to the extent that they provide a possible explanation for the damages claimed by the landlord. The landlord issued a written caution to the tenants on May 2, 2008 regarding complaints of excessive noise and traffic.

During the hearing, the landlord pointed to a notice to end the tenancy served by the tenants on May 31, 2008 to take effect June 30, 2008 at which time, in fact, the tenants moved out. The notice asked the landlord to retain the security deposit against the June rent. The landlord served a 10-day Notice to End Tenancy for unpaid rent on June 14, 2008.

The condition inspection report contains a notation that the tenants refused to participate in the condition inspection and the landlord submitted the "Notice of Final Opportunity to Schedule a Condition Inspection" setting a time of 10 a.m. on June 30, 2008. While the tenant contested the fact, I accept the evidence of the landlord that she was there at the stated time. The tenants were finishing moving out, left the unit saying one would return shortly for the inspection and failed to do so.

Analysis

The landlord claims, and I find as follows:

1. *Unpaid rent.* As noted, the tenants did not pay the June rent and asked that the security deposit be directed toward that rent. As that is not the purpose of the security deposit as the landlord advised, I find that the full rent for June is owing, although the landlord will be permitted to retain the security deposit and that will be deducted from the totaled owed to the landlord. In order to clarify the calculations, the landlord is owed \$900 for the June rent plus \$25 late fee.
2. *Cleaning.* The landlord claims \$200 for cleaning, an amount I find reasonable and in keeping with the norms for such work.
3. *Removal of Garbage and Tenants belongings to storage.* With this, as with others of the landlord's charges, these duties were carried out by staff and the landlord was unable to provide receipts. The landlord claims \$360 for labour for two employees needed to do the work. This claim is allowed.
4. *Repairs – new bi-fold door, repair holes in the drywall, and repaint.* For these items, the landlord claims \$500. Again, as materials were largely drawn from the landlord's stock, I find it difficult to set a precise value. The landlord gave evidence that cost of the replacement bi-fold door was \$112. Taking that into account and the extent of the work described, I award the landlord a reduced total of \$300 on this claim.
5. *Labour for painting and repairs.* The landlord claims a total of \$360 for labour to do the repairs and paint. I allow this part of the claim.
6. *Filing fee.* As the landlord's application has succeeded in large, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

As per the tenants' notice to end the tenancy and the landlord's claim, I find that the landlord is entitled to retain the security deposit plus interest and credit that amount to the tenants' indebtedness.

Thus, the total amount owed by the tenants to the landlord is calculated as follows:

| | |
|--|-------------------|
| June rent | \$ 900.00 |
| Late fee | 25.00 |
| Cleaning | 200.00 |
| Removal of garbage and abandoned goods | 360.00 |
| Repair materials | 300.00 |
| Repairs, labour | 360.00 |
| Filing fee | 50.00 |
| Sub total | \$2,195.00 |
| Less retained security deposit | - 450.00 |
| Less interest | - 1.42 |
| TOTAL | \$1,743.58 |

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for \$1,743.58, enforceable through the Provincial Court of British Columbia, for service on the tenants.

September 25, 2008
