

Decision

Dispute Codes:

MNR, MNDC, MND, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the "Act") to hear this matter and decide the issues.

The Landlord and the Landlord's agent gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlords' application for a Monetary Order for unpaid rent and damages to the rental unit, to keep all of the security deposit, and recover the filing fee from the Tenant.

- (1) Are the Landlords entitled to a monetary order?
- (2) Are the Landlords entitled to keep all of the security deposit?
- (3) Are the Landlords entitled to recovery of the filing fee from the Tenant?

Background and Evidence

Landlords' evidence

The Landlord testified that he personally served the Tenant with copies of the Application for Dispute Resolution and hearing package on February 10, 2009, at the

Tenant's new residential address.

The Landlords' agent testified that:

- The tenancy started on April 1, 2008. The monthly rent was \$750.00, due on the first day of the month.
- On February 6, 2009, the Landlords discovered that the Tenant had abandoned the rental unit. The Tenant did not pay rent for the month of February, 2009.
- The Landlords withdrew their application for loss of rent for the month of March, 2009, because the rental unit was re-rented on March 1, 2009.
- The Tenant left the rental unit in a dirty and damaged condition. The Landlords are applying for damages, as follows: \$200.00 for cleaning the rental unit (10 hours at \$20.00 per hour); rental of a carpet shampooer (\$34.71); replacement of refrigerator gaskets (\$138.64); replacement of broken blinds (\$38.15); and replacement of mail box keys (\$10.07).
- The Landlords provided photographic evidence of the rental unit on April 15, 2009, to the Residential Tenancy branch. The Landlords' agent testified that he provided the Tenant with copies of the late evidence on April 13, 2009.
- There was no move-in or move-out inspection.
- The Tenant paid the Landlords a security deposit in the amount of \$375.00 on April 1, 2008.

Analysis

I accept the Landlords' agent's testimony that he personally served the Tenant with the Notice of Hearing documents. In spite of being served with the documents, the Tenant did not appear at today's Hearing and the Hearing proceeded in her absence.

I grant the Landlords' claim for unpaid rent for the month of February, 2009, in the amount of \$750.00.

The Landlords did not provide the Tenant or the Residential Tenancy Branch with copies of photographic evidence within 5 days of the date of the Hearing, in accordance with the Act. The Landlords' application was filed on February 9, 2009, and the photographs were taken about the time the Landlords discovered the rental unit was abandoned, on February 6, 2009. The Landlords could have provided the Tenant and the Residential Tenancy Branch with copies of the photographs at the same time as they filed their Application for Dispute Resolution. In any event, the Landlords did not provide receipts in support of their damage claim. I dismiss this portion of the Landlords' claim.

The Landlords applied under Section 38(1)(d) to retain the security deposit paid by the Tenant. Section 38(5) of the Act states, in part, that the right of a landlord to retain all or part of a security deposit or pet damage deposit does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]*.

There was no move-in inspection done at the start of the tenancy and therefore the Landlords' application to retain the security deposit under section 38 of the Act is dismissed.

Section 72(2)(b) states:

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Pursuant to section 72(2)(b), the Landlords are entitled to apply the security deposit, together with accrued interest, towards partial satisfaction of their monetary claim.

The Landlords have been partially successful in their application and are entitled to recover the filing fee in the amount of \$50.00 from the Tenant.

I therefore make a monetary order in favour of the Landlords, calculated as follows:

Unpaid rent for February, 2009:	\$750.00
Recovery of filing fee	\$50.00
Less security deposit and interest of \$4.23	<u><\$379.23></u>
TOTAL	\$420.77
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Conclusion

I grant the Landlords a monetary order for \$420.77 against the Tenant. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

April 24, 2009
