

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant made an application for return of double the security deposit and recovery of the filing fee. The landlord made an application for compensation for unpaid rent, damage to the rental unit, retention of the security deposit, and recovery of the filing fee.

The tenant did not appear at the hearing and I consider the tenant's application abandoned. The landlord provided evidence that the landlord served the tenant with notification of the landlord's application by registered mail. I was satisfied that the landlord served the tenant with notification of the hearing and the nature of the landlord's claims; thus, I proceeded to hear from the landlord with respect to the landlord's application without the tenant present.

Issues(s) to be Decided

1. Whether the landlord has established an entitlement to unpaid rent.
2. Whether the landlord has established an entitlement to compensation for hydro charges incurred or caused by the tenant.
3. Whether the landlord has established an entitlement to compensation for damage to the rental unit.
4. Whether the landlord may retain the security deposit in partial satisfaction of the amount owed to the landlord.
5. Award of the filing fee.

Background and Evidence

Upon hearing testimony of the landlord and upon reviewing the evidence before me, I make the following findings. The landlord and tenant executed a one-year fixed term tenancy agreement on October 7, 2008. The landlord and tenant participated in a move-in inspection on October 25, 2008. The tenancy was to commence on November 1, 2008 and the tenant was required to pay rent of \$3,000.00 on the 1st day of every month. Hydro was not included in the monthly rent. The tenant vacated the rental unit sometime in December 2008; however, the landlord did not know the exact date as the tenant did not notify the landlord when he moved out. After the tenant vacated the rental unit, the tenant telephoned the landlord with respect to the return of his security

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deposit. The landlord requested the tenant return to inspect the unit with the landlord; however, the tenant refused to participate.

The landlord testified that the rental unit was vacant for the month of January 2009 and the landlord was able to re-rent the unit for February 1, 2009. The landlord is seeking to recover loss of rent of \$3,000.00 for the month of January 2009.

I also heard that the tenant failed to open a BC Hydro account in his name and consequently, the hydro was cut off on January 8, 2009. As a result, the landlord had to have the service reconnected and pay for the tenant's hydro consumption. The landlord had requested compensation of \$365.15 for service reconnection and consumption charges; however, during the hearing, the landlord reduced her claim to exclude consumption charges prior to November 2008.

The landlord provided an invoice in the amount of \$1,338.75 for repair of the walls in the rental unit. The landlord explained that the tenant caused damage to the walls in the living room and bedroom from hanging multiple mirrors on the walls and an entertainment unit. The tenant had hired someone to repair the damage; however, the repair was inadequate and had to be re-done. Upon enquiry, the landlord testified that the rental unit was in prime condition when the tenant moved-in and that the wall damage was caused by the tenant. The landlord is seeking compensation to recover the cost of the wall repairs from the tenant.

As evidence for the hearing, the landlord provided a copy of the tenancy agreement, the hydro bill, the move-in inspection report and the wall repair invoice. The landlord also provided a document signed by the tenant on December 1, 2008 which indicates that the landlord was notified that the tenancy was to be terminated. The document does not indicate when the tenancy was to be terminated but indicates that the tenant would pay the landlord for rent for the months of January 2009, February 2009 and March 2009 if the landlord did not re-rent the unit for those months.

The landlord testified that the landlord received the tenant's forwarding address in writing by way of the Tenant's Application for Dispute Resolution and the landlord made her application within 15 days of receiving the tenant's application.

Analysis

Upon review of the tenancy agreement, I find that the fixed term tenancy was to end October 31, 2009 and the tenant was required to vacate at that time. A fixed term tenancy may end by mutual agreement between the parties. Upon review of the document signed by the tenant December 1, 2008 and the testimony of the landlord, I

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find it likely that the parties mutually agreed to end the tenancy; however, it is not clear from the documentation when the tenancy was to end. Even if the tenant intended to give one month's written notice, as acceptable under a month to month tenancy, the earliest effective date for a written notice provided December 1, 2008 would be January 31, 2009. In addition, considering that the tenant did not notify the landlord of the date he vacated and the damage to the walls, I find the landlord has established an entitlement to recover unpaid rent of \$3,000.00 for the month of January 2009 from the tenant.

I accept that the tenant was required to pay for hydro and that his failure to open a BC Hydro account caused the service to be disconnected. Upon review of the hydro bill presented as evidence, I award the landlord the reconnection charge of \$131.25 plus consumption charges of \$166.44, including taxes and levies, for a total award of \$297.69.

The Act requires that a tenant is responsible for repairing any damage they cause to the rental unit, beyond normal wear and tear. Upon review of the move-in inspection report, the testimony of the landlord and the wall repair invoice, I am satisfied that the tenant caused damage to the walls in the rental unit and the landlord incurred a cost of \$1,338.75 to repair the walls. I hold the tenant responsible for compensating the landlord for that cost.

I grant the landlord's request to retain the tenant's security deposit in partial satisfaction of the amounts owed to the landlord. In absence of any evidence to the contrary, I accept that the landlord's evidence that she complied with the Act by making an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing. Therefore, the tenant is not entitled to return of double the security deposit.

As the landlord was successful in this application, I also award the filing fee to the landlord. Accordingly, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – January 2009	\$ 3,000.00
Hydro charges	297.69
Wall repair	1,338.75
Filing fee	50.00
Less: security deposit and accrued interest	<u>(1,505.29)</u>
Monetary Order	<u>\$ 3,181.15</u>

The landlord must serve the Monetary Order upon the tenant and may file it with the Provincial Court (Small Claims).



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Conclusion

The landlord is authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the amounts owed to the landlord. The landlord is also provided with a Monetary Order in the amount of \$3,181.15.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 21, 2009.

Dispute Resolution Officer