

DECISION AND REASONS

Dispute Codes:

MND, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for damage to the rental unit, for money owed for loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail to the address provided by the tenant when he vacated the rental unit at the end of November, 2008. The landlord provided a copy of a Notice to Vacate signed by the tenant on November 1, 2008 which contains the tenant's forwarding address. The landlord testified that prior to mailing the tenant the Notice of Hearing package the landlord went to this address and found the tenant's name on the tenant directory at the entrance of the building, confirming the tenant lived at the address. The landlord testified that the Notice of Hearing was mailed on April 1, 2009 to the tenant's forwarding address and provided Canada Post tracking #79348840740. The landlord testified that the registered mail was unclaimed by the tenant. These documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to costs for cleaning, painting, locks and liquidated damages totaling \$870.75?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 16, 2008 and ceased when the tenant vacated on November 30, 2008. The Tenant paid a security deposit of \$430.00 on March 10, 2008.

The landlord is claiming the following costs:

| | Claimed |
|-----------------|---------|
| Cleaning | 216.00 |
| Carpet cleaning | 99.75 |
| Painting | 157.50 |
| Locks | 45.00 |
| Lease break | 250.00 |
| Hauling | 52.50 |

| | |
|----------------|-------|
| Drape cleaning | 50.00 |
|----------------|-------|

Cleaning: The landlord provided December 1, 2008 invoices indicating four cleaners, working for \$14.00 per hour for a 3.5 hour period of time in the rental unit. The landlord testified that the bathroom was very dirty, that the kitchen required complete cleaning of all cupboards and that items left behind, such as a couch, rocker and garbage had to be hauled down from this 4th floor apartment so that it could be taken to the dump and that all windows, window tracks and floor required cleaning.

The landlord provided a copy of a December 1, 2008 receipt from a carpet cleaning company indicating a charge of \$99.75; the receipt indicates that the carpets were "very, very dirty – extra cleaning." The landlord testified that the tenant was a roofer and that this may have contributed to the state of the carpets. The landlord stated that they normally charge \$84.00 for carpet cleaning, but that this unit required extra cleaning.

The landlord provided a December 1, 2008 receipt for paint, dry walling and labour costs. The landlord testified that the rental unit had been newly painted just prior to the tenant moving in that a hole was punched in the bathroom wall and a towel rack had been pulled off the wall. The landlord stated that painting costs claimed are related to repair of this damage.

The landlord testified that the tenant did not return the keys to the rental unit and that a lock was taken from their building stock to replace the rental unit lock. The landlord has claimed \$20.00 building stock plus \$25.00 for lock installation costs.

The tenancy agreement signed between the parties for this fixed-term tenancy includes a liquidated damages clause requiring a \$250.00 payment by the tenant to cover administration costs of re-renting the unit. The tenancy was to end on March 31, 2009 and the tenant moved out on November 30, 2008.

The landlord claimed \$52.50 for hauling of a loveseat and chair and provided a December 2, 2008 receipt for this cost.

The landlord provided an invoice dated December 1, 2008 for drapery cleaning in the sum of \$50.00. The landlord testified that the drapes are cleaned prior to each tenant moving in and that these drapes smelled of smoke. The tenant was allowed to smoke in the rental unit.

The landlord had been given written notice that the tenant would move out and testified that the tenant was to meet with the landlord at 1:00 p.m. on November 30, so that a move out condition inspection could take place. The landlord stated that the tenant did not attend at the pre-arranged time. The landlord stated that no other inspection was arranged as they needed to prepare the unit for the next tenant. The landlord provided a copy of the move-in condition inspection, signed by the tenant, indicating no deficiencies with the rental unit.

The landlord provided a copy of the tenant's Notice to Vacate signed on November 1, 2008. On this form, which is supplied by the landlord, the tenant agrees the landlord

may retain the security deposit for any unpaid rent. At the time of signing this Notice to Vacate the tenant had paid his rent in full.

Analysis

In the absence of evidence to the contrary, I find that the tenant has left the rental unit in a state which required cleaning. I have accepted the landlord testimony that the tenant failed to attend a pre-arranged move-out condition inspection and that the tenant failed to return the keys to the landlord; requiring the landlord to change the rental unit locks.

I have determined that the cleaning costs are \$196.00 (4 cleaners X 14.00/hour X 3.5 hours.) In the absence of the tenant, I also find that the landlord is entitled to carpet cleaning, painting, lock and hauling expenses. I dismiss without leave to reapply the claim for drapery cleaning as the landlord testified that all drapes are cleaned at the end of each tenancy; therefore this is not an additional cost to the landlord.

I find the landlord is entitled to liquidated damages in the sum of \$250.00. The tenant agreement signed between the parties requires the tenant to pay this fee if the tenant terminates the fixed term tenancy before the end of the term; March 31, 2009. The tenant ended the tenancy effective November 30, 2008, based upon the tenant's notice to end the tenancy.

| | Claimed | Accepted |
|-----------------|---------|----------|
| Cleaning | 216.00 | 196.00 |
| Carpet cleaning | 99.75 | 99.75 |
| Painting | 157.50 | 157.50 |
| Locks | 45.00 | 45.00 |
| Lease break | 250.00 | 250.00 |
| Hauling | 52.50 | 52.50 |
| Drape cleaning | 50.00 | 0 |

In the absence of evidence to the contrary, I find that the landlord is entitled to compensation for the above costs in the sum of \$800.75.

The landlord application for dispute resolution assumed that the tenant had relinquished the deposit through the signing of the landlord Notice to Vacate form, dated November 1, 2009. Section 38(4) of the Act allows a landlord to retain the deposit if, at the end of the tenancy, the tenant agrees in writing to allow the landlord to retain that deposit to pay a liability or obligation. The Notice to Vacate signed by the tenant allowed the landlord to retain the deposit for rent only. Section 21 of the Act determines that a tenant may apply a deposit as rent if the landlord provides the tenant with written consent.

Section 72 of the Act allows a dispute resolution officer to order a party to a dispute resolution proceeding to pay any amount to the other and that this amount may be deducted from a deposit due to the tenant. Therefore, I find that the landlord may retain the deposit plus interest of \$435.23 in partial satisfaction of the monetary claim.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$850.75, which is comprised of \$800.75 in damages and loss and the \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of **\$435.23**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$415.52**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated June 08, 2009.

Dispute Resolution Officer