

## **DECISION**

### **Dispute Codes:**

MNR; MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent for the month of May, 2009, and loss of rent for June, 2009; a Monetary Order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the parties prior to the Hearing. All parties gave affirmed testimony. The parties were both given the opportunity to be heard and respond to the other party's submissions and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

### **Background and Evidence**

#### **Facts on which the parties agree:**

The Tenant moved into the rental unit in November, 2008. From July, 2008 to the end of October, 2008, the Tenant rented a different rental unit in the same rental property. The Tenant paid a security deposit in the amount of \$375.00 on July 10, 2009. Monthly rent was \$750.00, due on the first day of each month. The Tenant moved out of the rental unit on May 31, 2009.

The Landlord served the Tenant with the Notice of Hearing documents by registered mail, to the Tenant's forwarding address.

#### **The Landlord gave the following testimony:**

On May 2, 2009, the Tenant told the Landlord she was vacating the rental unit at the end of May, 2009. The Tenant gave the Landlord \$375.00 on May 2, 2009, and told the Landlord that she could keep the security deposit for the remainder of May's rent.

The Tenant changed her mind about moving on May 15, 2009 and provided the Landlord with a cheque in the amount of \$325.00. The Tenant still owed \$50.00 for May's rent. The Tenant put a "stop payment" on the cheque two days later.

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 26, 2009. The Landlord served the Tenant with the Notice to End Tenancy on May 26, 2009, by sliding the Notice under the Tenant's door at the rental unit. The Tenant wrote the Landlord a letter stating that she would be moving out on June 10, 2009.

The Tenant changed the lock on the rental unit and did not provide the Landlord with a copy of the key.

The Tenant did not provide written notification of her intent to vacate the rental property effective May 31, 2009, so the Landlord was not certain whether the Tenant would be moving or not. The rental suite was re-rented for July 1, 2009. The Landlord applied for loss of rent for the month of June, 2009.

The Tenant did not clean the rental unit before vacating and broke the covers for a couple of the plug outlets. The Tenant removed some blinds. The Landlord had to drill the lock to the Tenant's suite to gain access. There are two doors that required re-keying.

The Tenant alleges that she was dealing with the Landlord through the Landlord's agent, but that person is not an agent of the Landlord. She is only another tenant, who did some cleaning around the rental property for the Landlord.

The Tenant gave the following testimony:

The Tenant changed the locks to the suite because her keys had accidentally been locked inside her suite. The Tenant provided the Landlord's agent with a copy of the new keys.

The Tenant advised the Landlord's agent that she would be moving out on May 31, 2009. In any event, the Tenant was given a Notice to End Tenancy effective June 9, 2009. The Tenant accepted that the tenancy would end on that day.

The Landlord did not provide the Tenant with a copy of the rental agreement, even after numerous requests. On May 31<sup>st</sup> the Tenant attempted to do a move out inspection with the Landlord, but the Landlord refused. The Tenant had moved out prior to May 31, 2009, and when she went to the suite on May 31, the Landlord had drilled the lock and broken into her suite and would not allow her to enter. The Tenant was horrified and called the police, who are considering laying breaking and entering charges against the Landlord.

The Tenant cleaned the suite before moving out. The Tenant did not cause any damage to the suite and did not remove any blinds. In December, 2008, the Landlord removed the blinds so the Tenant could put curtains up in the rental unit. The Landlord took the blinds.

The Tenant had left a computer desk and wicker shelving unit in the suite, which she attempted to retrieve on May 31, 2009. These items were missing from the suite. The Landlord told the police that she had put the desk outside and that someone else had taken it, but the Landlord's agent witnessed the Landlord giving them to another tenant. The Landlord eventually returned the Tenant's computer desk to the Tenant.

The Tenant's Witness gave the following testimony:

The Witness testified that she was the Landlord's building manager and agent. She was the go-between for the Tenant and the Landlord. She did paperwork for the Landlord; handled complaints from other tenants; her name and phone number were given as the contact person in newspaper advertisements for new tenants; she ran the security camera and did garden and yard work around the rental property. She was compensated for her work, and also paid a reduced rent for her services.

The Tenant provided her with a copy of her new key in mid-April or May, 2009. The Witness told the Landlord that the locks were changed and that she had a copy of the new key.

There was a fight between the Landlord and Tenant on May 10, 2009. The Witness was present. The Tenant told the Landlord that she was moving out at the end of May. The Witness asked the Tenant for written notice, but the Landlord said she didn't need a letter. The Tenant gave the Landlord a cheque for \$325.00, but stopped payment on it.

At some point before May 31, 2009, the Tenant took her key back from the Witness because she didn't want anyone viewing her suite without her permission.

The Tenant did clean her suite before moving out, but it was not up to the Witness's standards.

### **Analysis**

Based on the testimony of the parties, I accept the fact that the Witness was an agent of the Landlord. The Landlord gave contradictory testimony on a number of issues, including: whether the Witness was her agent; what had happened to the Tenant's computer desk; whether the Witness had been provided with a copy of the Tenant's new key; and when the rental unit was re-rented to new tenants. Where the Landlord's testimony contradicted the testimony of the Tenant and/or the Tenant's Witness, I prefer the testimony of the Tenant and the Tenant's Witness.

The Landlord has applied for unpaid rent in the amount of \$375.00 for the month of May, 2009. I accept the Landlord's and Witness's testimony that the Tenant put a stop payment on the cheque for \$325.00, and therefore find that the Tenant owes the Landlord \$375.00 for the month of May.

The Landlord has applied for loss of rent for the month of June, 2009. The Landlord provided a copy of a tenancy agreement for the new tenants at the rental unit. The tenancy agreement states that the new tenants were allowed "free rent for June, 2009".

I therefore find that the rental unit was re-rented to new tenants in June, 2009, and that the Landlord is not entitled to recover loss of rent from the Tenant for the month of June, 2009. Furthermore, I accept the testimony of the Tenant and the Witness that the Landlord knew the Tenant was moving out at the end of May, 2009.

The Witness testified that the rental unit was cleaned prior to the Tenant vacating, but not to her standards. The Tenant submitted that it was cleaned to a reasonable standard. The Tenant provided evidence in the form of a letter from a woman who helped the Tenant clean the suite on May 26, 2009. The woman noted in her letter that there remained some cleaning (i.e. cleaning out the fridge and washing the floors), and that the Tenant would be finishing the cleaning on or before moving out. The Tenant's evidence was that she had replacement plug covers and was going to install them on May, 2009. I accept the Tenant's testimony that the Landlord would not allow the Tenant into the rental suite on May 31, 2009. I dismiss the Landlord's application for damages for the cost of cleaning the rental unit and for the cost of replacing the plug covers.

I accept the Tenant's testimony that the Landlord removed the blinds and dismiss the Landlord's application to recover the cost of replacing the blinds.

The Tenant changed the locks and provided the Landlord's agent with a copy of the new key. It was a contravention of Section 31(3) of the Act to change the locks to a rental unit without the Landlord's permission, unless the Tenant had an order from the Director under Section 70 of the Act. The Landlord must have a key to the rental unit, unless otherwise ordered by the Director. The Tenant took back the Landlord's copy of the key from the Landlord's agent. The Landlord has applied for recovery of the cost of replacing the locks in the amount of \$296.00. However, she did not provide documentary proof as to the cost of doing so. Therefore, I allow the Landlord's application for this cost in the amount of \$100.00.

The Landlord has been partially successful in her application and is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit, together with accrued interest, towards partial satisfaction of her monetary claim.

The Landlord has established a monetary order, as follows:

Unpaid rent for the month of May, 2009	\$375.00
Cost of replacing locks	\$100.00
Recovery of the filing fee	\$50.00
Subtotal	<u>\$525.00</u>
Less security deposit and accrued interest of \$ 2.69	-\$377.69
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$147.31</b>

### **Conclusion**

Pursuant to Section 67 of the Act, I hereby grant the Landlord a Monetary Order against the Tenant in the amount of \$147.31. 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.

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: September 16, 2009