



Dispute Resolution Services

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

DECISION

Dispute Codes: MNR, MND, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for the unpaid rent/loss of rent, damage to the rental unit and recovery of the filing fee for this proceeding.

In addition, I have exercised my discretion under section 64(3)(c) of the *Act* to permit the landlord to amend the application to request authorization to retain the security deposit in set off against any balance owed.

As a preliminary matter, the landlords had originally named the tenant's female co-tenant on the application. However, on evidence that she had moved out of the rental unit prior to the signing of the current rental agreement and was named but did not sign the agreement, all parties agreed that she could be removed from the application and the remaining tenant agreed to assume full liability.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent/loss of rent, damages and filing fee and authorization to retain the security deposit in set off against the balance owed.

Background, Evidence and Analysis

This tenancy originally began on September 9, 2008 and was renewed on March 1, 2009 under a fixed term agreement set to end of July 31, 2009. Rent was \$1,100 per month and the landlord holds a security deposit of \$550 paid on September 9, 2009.

During the hearing, the parties gave evidence that the tenant had moved out of the rental unit between June 5th and June 8th 2009 after having received a Notice to End Tenancy for unpaid rent even though he had advised the landlord in advance and the landlord had agreed to accept the rent on June 5, 2009.

While the tenant was aware that he could have nullified the notice by paying the rent, he chose to vacate on the notice due to a series of events that had impacted on his quiet enjoyment of the property.

The tenant gave evidence indicating the breach of quiet enjoyment, including gravel trucks coming on the property while was sleeping following a night shift and intrusive behaviour by the landlord.

While section 45 of the *Act* can relieve the tenant from the obligation to give proper written notice when there is a breach of a material term of the agreement, it requires that the tenant give the landlord written notice of the breach. The tenant did not do so. The landlord claims and I find as follows:

June 2009 rent - \$1,100. Having left the tenancy without having given notice, the tenant is responsible for the June rent and this part of the claim is allowed.

July 2009 rent - \$550. While the landlords originally claimed full rent for July, they had been able to find new tenants for the middle of the month and reduced this part of the claim to \$550. This is allowed.

Replace sink - \$350. The tenant concurred that the sink had been damaged during the tenancy and accepted full responsibility for its replacement. However, the landlord had factored into this claim the cost of transportation to Kelowna to buy the necessary materials. Such travel costs are not claimable so I reduce the award on this claim to \$330.

Replace damaged door - \$200. The tenant agrees with the part of the claim and it is allowed in full.

Repair hole in wall - \$80. The tenant agrees with this claim and it is allowed in full.

Buy and install four locks - \$130. While the tenant concedes that the keys were not returned at the end of the tenancy, I find this charge to be unnecessarily high. The landlord had the option of re-keying the locks at a lesser cost, Section 25 of the *Act* generally assigns the responsibility of locks to the landlord, and the landlord has provided no receipt or other proof the amount claimed. Therefore, I reduce the award on this part of the claim to \$25.

Repairs to soffits - \$200. While the tenant readily concurred with other damage claims by the landlord, he stated that he had no knowledge of damage to the soffits. In addition, the work has not yet been done, I have no written estimate of the cost and the faxed photographic evidence before me does not clearly show that the soffits need replacement. Therefore, I find that the landlord has not met the burden of proof on this part of the claim and it is dismissed.

General cleaning of house and yard - \$120. I find this part of the claim to be reasonable and in keeping with standard claims for such work. It is allowed in full.

Filing fee - \$50. As the landlord's claim has succeeded in large on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding.

Thus, including authorization to retain the security deposit in set off against the balance owed, I find that the landlord is entitled to a Monetary Order calculated as follows:

June rent	\$1,100.00
July half-month rent	550.00
Sink replacement	350.00
Replace damaged door	200.00
Repair hole in wall	80.00
Lock replacement	25.00
General cleaning	120.00
Filing fee	50.00
Sub total	\$2,475.00
Less retained security deposit	- 550.00
Less interest	- 2.75
TOTAL	\$1,922.25

Conclusion

Thus, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,922.25 for service on the tenant.