

DECISION

Dispute Codes: MNR, MND, MNDC MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served on September 4, 2009 by posting on the tenant's door. The landlord also sought a Monetary Order for the unpaid rent/loss of rent, damage to the rental unit and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed..

Despite having been served the Notice of Hearing sent by registered mail on September 15, 2009, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Even though the tenant did not pick up the registered package, it is deemed under section 90 of the Act to have been received. Therefore, the hearing proceeded in the absence of the tenant.

Issues to be Decided

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

Background, Evidence and Analysis

This tenancy began on November 1, 2003. Rent was \$3,448 per month and the landlord holds a security deposit of \$1,450 paid on October 24, 2003 under a fixed term rental agreement which converted to a month-to-month tenancy after the first year.

During the hearing, the landlord made reference to a letter to the landlord from the tenant dated August 17, 2009 outlining a number of deficiencies in the rental unit and demanding remedy by the end of the month or he would need to move.

However, the landlord noted that the letter was received and date stamped September 10, 2009, and she believes it was sent after the Notice to End Tenancy was served. In addition, without concluding that there was a material breach in this matter, I would observe that section 45 of the Act provides one avenue of refuge from the one-month notice requirement on tenant's notice if a material breach is found. It requires that the tenant provide written notice to end the tenancy on a date after notice is given after the landlord has failed to remedy a material breach within a reasonable time of receiving a written demand.

The landlord gave evidence that, after being advised by a representative of the strata that the tenant had moved, she attended the rental unit on September 11, 2009 and, except for refuse and some discarded items, to all appearances, the tenant had abandoned the rental unit.

In order to confirm the landlord's right to possession, she requested and I find she is entitled to an Order of Possession effective immediately.

As a result of the tenant leaving without notice and in compensation for damage to the rental unit and other losses, the landlord claims and I find as follows:

Unpaid rent for September 2009 - \$3,448. I find that the tenant left the rental unit without giving due notice as required under section 45 of the *Act* and I allow this claim in full.

Loss of rent for October 2009 - \$3,448. Section 7 of the *Act* requires that one party of a rental agreement making claim against the other must do whatever is reasonable to minimize the loss. The landlord gave evidence that she became aware that the unit was abandoned on September 11, 2009 but she has given no evidence that beginning to search for a new tenant. In addition, she stated that she had been unable to contact the unit owner for direction with respect to repairs and/or sale of the unit. Therefore, I must give the tenant the benefit of the doubt as to whether the loss of rent for October could have been avoided. Therefore, this claim is dismissed.

Replace key fob - \$50. The tenant did not return a key fob when he left and this claim is allowed in full.

Replace parking pass - \$25. The tenant did not return a parking pass when he left and this claim is allowed in full.

Cleaning - \$277.20. On the basis of photographic evidence and submitted receipt, I find this claim to be fair and reasonable and it is allowed in full.

Cleaning and repair of blinds - \$535.50. On the basis of photographic evidence and a written estimate, this claim is allowed in full.

Exceptional wall patching - \$220.00. While the rental unit was due for repainting which the landlord had done at a cost of over \$3,000, the landlord stated that the tenant had installed shelving in the bathroom and bedroom which the supplier charged an addition \$220 to remove and do wall repairs. This claim is allowed.

Refuse removal - \$100. The landlord described, and provided photographic evidence of various materials and garbage left behind by the tenant. I find this to be a fair and reasonable charge for disposal and it is allowed.

Repair broken shower door - \$45. I note that this is among the items in the tenant's letter requesting repairs and, given the possibility that the need for repair of the shower door was a function of normal wear and tear, I give the tenant the benefit of the doubt and dismiss this claim.

Repair bi-fold door - \$65. On the basis of photographic evidence, I find this claim should be allowed in full.

Filing fee - \$100. As the landlord's claims have been proven in large, I find that the landlord should recover the filing fee for this proceeding from the tenant.

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:

Rent for September 2009	\$3,448.00
Replace unreturned key fob	50.00
Replace unreturned parking pass	25.00
General cleaning	277.20
Cleaning and repair of blinds	535.50
Exceptional wall patching	220.00
Refuse removal	100.00
Repair bi-fold door	65.00
Filing fee	100.00
Sub total	\$4,820.70
Less retained security deposit	- 1,450.00
Less interest (October 24, 2003 to date)	- 51.33
TOTAL	\$3,319.37

Conclusion

Thus, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$3,319.37 for service on the tenant and an Order of Possession, enforceable through the Supreme Court of British Columbia, effective immediately.