

Decision

Dispute Codes:

OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This Hearing was scheduled to hear the Landlord's application for an Order of Possession; a monetary order for unpaid rent and compensation for damages or loss; to retain the security deposit to be applied in partial satisfaction of the monetary order; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord gave affirmed testimony and this matter proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, the Landlord testified that the Tenant moved out of the rental unit on or about May 31, 2009. Therefore, an Order of Possession is not required and the Landlord's application for an Order of Possession is dismissed without leave to reapply.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order and if so, in what amount?

Background and Evidence

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, via registered mail. The Landlord testified that she performed an on-line search on Canada Post, and confirmed with the tracking number that the Tenant signed for the documents on July 28, 2009. The Landlord provided the registered mail tracking number.

The Landlord provided a copy of the tenancy agreement in evidence. The tenancy started on September 16, 2008, and was a term lease, to end on September 16, 2009. Monthly rent for the rental unit was \$1,200.00, due on the first day of each month. However, the Landlord testified that early on in the tenancy, the parties reached a verbal agreement that the Tenant could pay rent \$600.00 biweekly. The Tenant paid a security deposit in the amount of \$600.00 on September 16, 2008.

The Landlord testified that at the beginning of the tenancy, the parties had considered entering into a rent-to-own agreement, but the Tenant decided not to buy the property, and therefore no agreement was signed.

The Landlord testified that the Tenant moved out of the rental unit on or about May 31, 2009. The Tenant had provided the Landlord with a cheque in the amount of \$600.00 for rent for the last two weeks of May, 2009, but the cheque was returned to the Landlord "payment stopped". The Landlord has the Tenant's cheque in the amount of \$600.00, dated June 1, 2009, which she has not attempted to negotiate.

The Landlord testified that she has not re-rented the rental unit and does not intend to re-rent the rental unit because she decided to sell it. The Landlord's son-in-law and daughter moved back into the rental unit on June 15, 2009.

The Landlord provided a copy of the Condition Inspection Report in evidence. The Tenant and the Landlord signed the move-in portion of the Condition Inspection Report. The Landlord testified that the Tenant did not attend for the move-out inspection, and therefore the Landlord completed the report in his absence. The Landlord testified that the Tenant did not clean the rental unit before moving out. The Landlord testified that the Tenant took a weight bench belonging to the Landlord, and caused damage to the rental property. The Landlord testified that, with the exception of repairing the door, the remainder of the damages to the rental unit have not yet been repaired, and are estimates. The Landlord provided a list of damages, together with photographs of the damages claimed, as follows:

Damaged item	Cost to Landlord
Door frame, moulding and latch (8 photos)	
<ul style="list-style-type: none"> Remove/replace door frame, 8 hrs @\$10.00/hr (estimate) 	\$80.00
<ul style="list-style-type: none"> Repair door (estimate) 	\$59.39
<ul style="list-style-type: none"> Replace trim (estimate) 	\$10.00
Replace curtain tiebacks (2 photos) (estimate)	\$50.00
Replace master bedroom curtain rod (estimate)	\$30.00
Repair chipped paint in upstairs bathroom (1 photo) (estimate)	\$35.00
Repair laminate floors in #3 bedroom upstairs (1 photo) (estimate from Home Depot)	\$100.00
Sand and repaint damaged front metal door (4 photos) (estimate)	
<ul style="list-style-type: none"> Sanding, 3 hrs @\$10.00/hr 	\$30.00
<ul style="list-style-type: none"> Painting, 2 hrs @\$10.00/hr 	\$20.00
<ul style="list-style-type: none"> Paint and supplies (special metallic paint) 	\$130.00
Replace broken door stop (estimate)	\$20.00
Repair broken door handles, 2 hrs @\$10.00/hr (2 photos) (estimate)	\$20.00
Furnace cleaning (estimate)	\$120.00
Replace tree Tenant chopped down (estimate from Art Knapp Plantland)	\$129.00
Repair damaged basement wall (4 photos)(estimate)	\$100.00
Dump fees (2 loads) (3 photos)	\$60.00
Remove Tenant's abandoned dryer to storage	\$20.00
Cleaning house (upstairs and down), 18 hrs @\$10.00/hr	\$180.00
Cost to replace weight bench taken by Tenant (estimate)	\$225.00
Replace upstairs bathroom drain	\$9.88
Unpaid rent for May 15 to May 31, 2009 (payment stopped)	\$600.00
Loss of rent for June 1 to June 15, 2009	\$600.00
TOTAL CLAIMED	\$2628.27

The Landlord's Witness gave the following testimony:

The Witness is the Landlord's daughter and lived in the rental property prior to the Tenant moving in. The Witness's husband left his weight bench in the basement storage room by the furnace. The Tenant was given permission to use the weight bench while he was living in the rental unit. The Witness was present when the Landlord did the walk-through immediately after the Tenant moved out. The weight bench was gone.

Analysis

I am satisfied that the Tenant was served on July 28, 2009, with the Notice of Hearing documents in accordance with the provisions of Section 89 of the Act. Despite being served with the documents, the Tenant did not sign into the teleconference, and the Hearing proceeded in his absence.

I dismiss the Landlord's claim for the cost of cleaning the furnace, as furnace maintenance (including replacement of furnace filters) is the responsibility of the Landlord. I find the Landlord's estimates with respect to the cost of replacing the curtain tiebacks, and weight bench to be excessive. There was no evidence provided with respect to the age and condition of the weight bench. The Landlord stated that the tiebacks were of superior quality, but there was no evidence provided with respect to the replacement cost of the tiebacks. I dismiss the Landlord's claim for loss of rent for June 1 to 15, as the Landlord testified that she had no intention of re-renting the rental unit. With respect to the remaining portion of the Landlord's claim, I find the estimates provided to be reasonable and that the Landlord has proven her claim based on the undisputed testimony of the Landlord and the Landlord's Witness.

Pursuant to Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of her monetary claim. The Landlord has been successful in her application and is entitled to recover the cost of the filing fee from the Tenant.

The Landlord has established a monetary order, as follows:

Damaged item	Cost to Landlord
Replace/repair master bedroom door frame, moulding and latch	\$149.39
Replace curtain tiebacks	\$20.00
Replace master bedroom curtain rod	\$30.00
Repair chipped paint in upstairs bathroom	\$35.00
Repair laminate floors in #3 bedroom upstairs	\$100.00
Sand and repaint damaged front metal door	\$180.00
Replace broken door stop	\$20.00
Repair broken door handles	\$20.00
Replace tree Tenant chopped down	\$129.00
Repair damaged basement wall	\$100.00
Dump fees	\$60.00
Remove Tenant's abandoned dryer to storage	\$20.00
Cleaning house (upstairs and down)	\$180.00
Cost to replace weight bench taken by Tenant	\$50.00
Replace upstairs bathroom drain	\$9.88
Recovery of filing fee	\$50.00
Unpaid rent for May 15 to May 31, 2009 (payment stopped)	<u>\$600.00</u>
Subtotal	\$1753.27
Less security deposit	<u>-\$600.00</u>
TOTAL MONETARY AWARD AFTER SET-OFF OF SECURITY DEPOSIT	\$1153.27

I order that the Landlord not attempt to negotiate any of the Tenant's post-dated cheques she may possess and to return any such post-dated cheques to the Tenant forthwith.

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$1,153.27 against the Tenant. 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.

I hereby order that the Landlord not attempt to negotiate any of the Tenant's post-dated cheques she may possess and to return any such post-dated cheques to the Tenant forthwith.

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: November 18, 2009.
