

## **DECISION**

### Dispute Codes:

**MNR, MND, 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 unpaid rent, damages and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matter

The Tenant confirmed that his evidence was not served to the Landlord; therefore, I did not consider his evidence submission; the Tenant was at liberty to provide oral testimony.

The landlord's application for dispute resolution details of the dispute indicates that the landlord has made application requesting compensation for loss of September rent revenue; therefore the landlords' intention to claim for loss has been properly served to the tenant.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent, damage to the rental unit and loss of revenue?

Is the landlord entitled to filing fee costs?

### Background and Evidence

This tenancy commenced in May 2009. The landlord rents the house from a 3<sup>rd</sup> party and has other occupants rent rooms. The occupants are not co-tenants. Rent was

\$600.00 per month due on the first day of the month; there is no written tenancy agreement or move-in and move-out condition inspection.

The landlord is claiming compensation for the following:

August rent – unpaid portion	300.00
NSF charge ad property manager fee	130.00
Window damages	100.00
Paint and cleaning	150.00
Filing fee	50.00
	1330.00

During the hearing the parties agreed that the tenant gave written notice on August 5, 2009 that he was moving out on the weekend of August 8. The landlord testified that the tenant then altered his move-out date, stating he would leave in two weeks. The landlord stated the tenant moved out on August 16, 2009. During the hearing the tenant confirmed that he paid \$300.00 for August rent as he was moving out early.

The landlord claimed compensation in the sum of \$300.00 for the balance of August rent.

The landlord testified that the tenant's cat damaged a window. The parties agreed that the window was left open so that the cat could come and go from the rental unit. The landlord stated that the window frame was damaged and requires sanding and painting. The landlord provided faxed copies of photographs which were of poor quality and difficult to discern.

The tenant testified that the cat left paw marks and dirt on the window ledge and denied that there was any damage.

The landlord stated that the tenant left the rental unit in an unclean state and that the unit had a stench due to buckets of urine the tenant had in the unit and the smell from the cat. The landlord stated that on August 5 a notice was posted to the tenant's door informing him of the need to complete an inspection at the time of move-out; the inspection did not occur on the weekend of August 8 and the landlord stated that he was unable to schedule another time as the tenant vacated prior to the expected date. The landlord testified that cleaning occurred over a period of days due to the smell that needed to be eliminated. The landlord stated that he has not been able to complete the required painting.

The tenant testified that he was not given a note requesting an inspection and that he and some family members removed garbage, vacuumed and washed walls and the floors. The tenant confirmed that he had left buckets of urine in the rental unit as he had difficulty going upstairs to the bathroom. The tenant testified that this was due to the landlord changing the lock on his room. During the hearing the parties agreed that the tenants lock had been changed for a one day period of time, but that during this time the tenant did not have access to the unit.

The landlord is claiming cleaning costs for his own labour; all other costs are estimated or not supported by receipts.

The landlord stated that due to the smell for the urine that had been sitting in the rental room, cleaning and deodorizing took place over an extended period of time, causing the landlord to lose rent revenue for September.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the tenant has failed to give the landlord notice to end this tenancy, as required by section 45 of the Act. The tenant gave notice on August 5, 2009 which would be effective on September 30, 2009. Therefore; I find that the landlord is entitled to compensation in the sum of \$300.00 for the balance of August 2009 rent.

The landlord provided no evidence of any NSF or property management fees that were incurred as a result of a breach of the Act by the Tenant. In the absence of evidence and a written tenancy agreement which details these fees, I dismiss without leave to reapply the claim for NSF and property management fees. I base this decision on section 6 of the act which provides:

- (3) A term of a tenancy agreement is not enforceable if
  - (a) the term is inconsistent with this Act or the regulations,
  - (b) the term is unconscionable, or
  - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that there is inadequate evidence before me of the need to paint the room and repair the window. There is no evidence before me of the state of the window ledge at the start of the tenancy and, based upon the tenant's denial of damages to the window and in the absence of condition inspection reports or receipts for repair work and painting actually completed; I find that the claim for window damages and painting is dismissed without leave to reapply.

I find, based upon the tenants testimony and the landlord's statement, that the rental unit did require deodorizing and cleaning by the landlord and that the landlord is entitled to cleaning costs in the sum of \$100.00.

In relation to the claim for loss of revenue, I find that the tenant failed to provide the landlord with proper notice to end his tenancy; however the landlord must mitigate any loss. The landlord did not provide evidence of any efforts to rent the room for mid-September and while I accept cleaning was required, it is not unreasonable to expect that the landlord would make efforts to locate a new tenant for at least mid-September. Therefore, I find that the landlord is entitled to loss of one-half of September rent revenue in the sum of \$300.00.

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.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
NSF charge ad property manager fee	130.00	0
Window damages	100.00	0
Cleaning	150.00	100.00
September rent revenue loss	600.00	300.00
Filing fee	50.00	50.00
	1330.00	750.00

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of **\$750.00**, which is comprised of \$600.00 in unpaid rent and loss of rent revenue, \$100 cleaning costs and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order in that amount. 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.

I have enclosed a copy of the Guide for Landlords and Tenants in British Columbia for reference by each party.

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: December 2, 2009.

---

Dispute Resolution Officer