

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD and FF

Introduction

This application was brought by landlord seeking a Monetary Order for unpaid rent/loss of rent, damage and loss, and recovery of the filing fee for this proceeding. In addition, the landlord seeks authorization to retain the security deposit in set off against any balance owed.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the amounts claimed and authorization to retain the security deposit in set off.

Background, Evidence and Analysis

This tenancy began on or about September 15, 2007. Rent was \$675 per month and the landlord holds a security deposit of \$325 paid on or about September 15, 2007.

This matter is somewhat complicated by the fact that the tenant vacated on July 11, 2009 under a Notice to End Tenancy for landlord use which he had disputed and which resulted in the landlord receiving an Order of Possession effective August 1, 2009.

In the interim, the tenant was late with the June rent and was served a 10-day Notice to End Tenancy on June 2, 2009 which was posted and deemed to have been served on June 5, 2009. The tenant paid \$350 by cheque dated June 4, 2009 with a note that the damage deposit would cover the remainder of the rent due.

The parties also reached agreement in July that the tenant would sell his drapes to the landlord for \$250.

During the hearing, the landlord submitted the following claims, and I find as follows:

Unpaid rent for June - \$325. While the tenant offered the security deposit for this amount, section 21 of the Act states that: "Unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent." Therefore, I find that the tenant owes \$325 of the June rent and the security remains to be dealt with under the provisions of section 38 of the *Act*.

Unpaid rent for July - \$675. This tenancy concluded under an Order of Possession pursuant to a Notice to End Tenancy for landlord use which provides for the tenant to receive the last month's rent free. I find that order remained in effect at the end of the tenancy and that the tenant was entitled to relief from the July rent.

Cleaning - \$200. The landlord claims it took two persons working five hours each to complete cleaning of the rental unit. The tenant holds that the landlord did not give him sufficient time to complete the work.

However, I find by a note sent by the tenant to the landlord stating he expected to be gone by July 12, 2009 and a written submission from the landlord's agent describing the tenant's attendance at a move out condition inspection, that the landlord reasonably concluded the tenant had vacated. I find that the cleaning charge is fair and consistent with prevailing rates and it is allowed in full.

Refuse removal and dumping fees - \$141. The landlord submitted a receipt for \$150 including loading, trucking and dump fees and deducted \$9 for garbage pick-up tags left by the tenant. I find that this claim is proven and valid and it is allowed in full.

Professional Carpet Cleaning - \$100. The tenant concurs with this claim which was part of the rental agreement and it is allowed in full.

Water damaged drawer fronts - \$200. The landlord claims that the tenant had advised her of a water overflow in the kitchen sink and that this has caused the damage. The tenant contested the claim and stated the drawers were in the same condition as they were at the beginning of the tenancy. There was no move-in condition inspection report at the beginning of the tenancy, and in the absence of such comparative documentation, this claim is dismissed.

Previous hearing filing fee - \$50. In the previous hearing of July 10, 2009, the Dispute Resolution Officer awarded the tenant the \$50 filing fee. As that has not been paid, the parties agree that it may be registered as a credit for the tenant.

Filing fee - \$50. Having found merit in the landlord's application, I find that she is entitled to recover the filing fee for this proceeding from the tenant.

Sale of curtains - \$250. The parties concur that they agreed the landlord would pay the tenant \$250 for his curtains and this amount should be credited to the tenant.

All claims considered, I find that accounts balance as follows:

Landlord's claims allowed		
June rent shortfall	\$325.00	
General cleaning	200.00	
Refuse disposal and dump fee	141.00	
Carpet cleaning	100.00	
Filing fee	<u>50.00</u>	
Subtotal	\$816.00	\$816.00
Tenant's Credits		
Security deposit	\$325.00	
Interest (September 11, 2007 to date)	6.39	
Sale of drapes to landlord	250.00	
Filing fee owed from previous hearing	<u>50.00</u>	
Sub total	\$631.39	- <u>681.39</u>
TOTAL		\$134.61

Conclusion

Thus, in addition to authorization to retain the security deposit, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$134.61 for service on the tenant.