

DECISION

Dispute Codes: OPC, CNC, MND, MNSD and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of December 22, 2009, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for cause served on December 11, 2009 in person. Causes included the washing machine overflowing during the tenants use and disturbance of other tenants. The landlord also sought a Monetary Order for damage to the rental unit resulting from an overflow in the clothes washer and recovery of this filing fee, and authorization to retain the tenant's security deposit in set off.

By application of December 11, 2009, the tenant seeks to have the Notice to End Tenancy set aside and recovery of his filing fee.

Issues to be Decided

These applications required a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for damage to the rental building.

Mutual Agreement to End Tenancy

During the hearing, the parties came to a mutual agreement to end the tenancy on February 28, 2010. Therefore, I do not find it necessary to make a finding on the question as to whether to uphold or set aside the Notice to End Tenancy. However, to perfect the agreement, the landlord's copy of this decision is accompanied by an Order of Possession to take effect at 1 p.m. on February 28, 2010.

In so doing, I note that the tenant gave full assurance that he would do his utmost not avoid disturbing other tenants for the duration of the tenancy.

Background and Evidence

This tenancy began on June 30, 2009. Rent is \$450 per month and the landlord holds a security deposit paid on June 10, 2009.

During the hearing, the landlord gave evidence that while the tenant was using the washing machine, it had overflowed causing water damage to the laminate flooring in the rental unit below. The landlord stated that the washing machine has required no repairs since the incident and that the overflow had been caused by the tenant's use.

The tenant said there had been some problem with the washer earlier, and that he had been told by another tenant that the machine was adequate to wash the blanket he had put in it. Another tenant had stated that the subject tenant had placed a duvet in the machine which prevented proper draining and caused the overflow.

The tenant and other witnesses confirmed that he had assisted with at least part of the clean up.

The landlord claims the cost of repairing the floor in the rental unit below the laundry area as follows:

Flooring and underlay materials	\$303.67
Mould transitions	29.33
Install/Adhesive/caulks	26.34
Rented tools	51.75
Labour	<u>200.00</u>
TOTAL	\$611.09

The landlord submitted receipts for all materials. When the tenant questioned the charge for labour, the landlord stated that, in order to lower the cost as much as possible, he had a friend who is a carpenter assist him. I find the labour cost to be reasonable for the amount of work required.

Analysis

Section 32(3) of the Act states that, "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I find that the damage was caused by the actions of the tenant and that he must be responsible for the cost of repairing the flooring.

I further find that the landlord may retain the security deposit in set off against the balance owed.

I find that the parties should each remain responsible for their own filing fee.

Thus, I find that the tenant owes the landlord an amount calculated as follows:

Repair of the damaged floor	\$611.09
Less retained security deposit (no interest due	- 225.00
TOTAL	\$386.09

Conclusion

The landlord's copy of this decision is accompanied by:

1. An Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on February 28, 2010;
2. In addition to authorization to retain the tenant's security deposit, a Monetary Order for \$386.09, enforceable through the Provincial Court of British Columbia, for service on the tenant.

January 21, 2010