

Introduction

This hearing was convened upon an application filed by the landlord seeking:

1. A monetary order for damages and/or compensation for loss;
2. A monetary order for unpaid rent;
3. An order to be allowed to retain the security deposit; and
4. Recovery of the filing fee.

The landlord gave evidence that she served the tenants with the Application for Dispute Resolution by way of registered mail sent November 17, 2009. I am satisfied that they were duly deemed served as required by the Act. The tenants did not appear at the hearing. The landlord appeared and gave evidence under oath.

Issues(s) to be Decided

Whether the landlord is entitled to the orders sought.

Background and Evidence

The landlord testified that the parties entered into a one year fixed term tenancy agreement commencing February 1, 2009 and ending January 31, 2010. Rent was fixed at \$830.00 per month and the tenants paid a \$415.00 on January 9, 2009 security deposit and \$200.00 pet deposit on February 1, 2009. The landlord submitted the tenancy agreement signed by the parties into evidence. The landlord also submitted an addendum to the tenancy agreement setting out that the tenants received a \$150.00 "move-in allowance" which was required to be returned if the tenants did not remain in the rental unit for 12 months. The landlord testified that the tenants had rental arrears of \$5.00 for September and they did not pay October's rent. The landlord therefore

seeks those rental arrears as well as a \$20.00 late rent fee in accordance with the tenancy agreement.

Despite the fixed term tenancy agreement the landlord testified that the tenants moved out on October 4, 2009 in response to a Notice to End Tenancy given for Cause. The landlord testified that the tenants were disturbing other tenants with their music and parties and that one of the tenants threatened other tenants. Further one of these tenants kicked a hole in a wall.

As the tenancy ended prior to the end of its fixed term, the landlord is also claiming a \$300.00 liquidated damages fee in accordance with the tenancy agreement.

The landlord says the tenants did not clean the rental unit and they caused damage to the rental unit during their tenancy. The landlord therefore claims the costs of this cleaning and repairs. The landlord supplied photographs of the rental unit and a move-in/move-out inspection report signed by the tenants at move-in although not at move-out.

In total the landlord claims as follows:

Outstanding September rent	5.00
Outstanding October Rent	830.00
October Rent late fee	20.00
Carpet Cleaning	70.00
Painting and wall repair	125.00
General Suite Cleaning	100.00
Garbage Removal	50.00
Liquidated Damages	300.00
Recover move-in allowance	150.00
Filing Fee	50.00
Less a payment made by the tenants on January 28, 2010	-100.00
<b>Total Sought</b>	<b>1600.00</b>

The landlord also seeks to retain the security and pet deposits in partial satisfaction of their claims.

### Analysis

I am satisfied with the undisputed testimony of the landlords and with the landlords evidence respecting the damages and cleaning required and I will allow their claim in this regard.

I am also satisfied with the landlord's undisputed testimony and evidence regarding the rental arrears and I will allow the landlord's claim in that regard.

With respect to the \$150.00 move-in allowance recovery claimed, the addendum signed by the tenants in this regard states in part:

By signing this addendum the tenant agrees that if he/she vacate the above noted premises prior to completing 12 months of tenancy, the moving allowance/food voucher will be deducted from the tenant's security deposit.

While Section 20 of the *Residential Tenancy Act* does not allow a landlord to:

e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

The landlord has made application to retain the sum as opposed to automatically deducting it from the deposits and I therefore find that as the tenants vacated the rental unit prior to having lived in it for 12 months that they are responsible for returning this sum to the landlord.

On the other hand, with respect to the liquidated damages, I find that the landlord is not entitled to recover this sum. I make this finding because the clause in the tenancy agreement with respect to liquidated damages says:

To terminate this lease prior to the expiry date on the 31 day of January 2010, the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition **the tenant will be required to pay \$300.00 as liquidated damages to cover administration costs – this is not a penalty.**

The evidence of the landlord, that I accept, is that the landlord gave the notice to end this tenancy, not the tenants. I therefore dismiss the landlord's claim for \$300.00 liquidated damages as the tenant did not give notice to end the tenancy prior to the end of its fixed term.

The landlord will be awarded a monetary order as follows and granted permission to retain the pet and security deposits in partial satisfaction thereof as follows:

Outstanding September rent	5.00
Outstanding October Rent	830.00
October Rent late fee	20.00
Carpet Cleaning	70.00
Painting and wall repair	125.00
General Suite Cleaning	100.00
Garbage Removal	50.00
Recover move-in allowance	150.00
Filing Fee	50.00
Less a payment made by the tenants on January 28, 2010	-100.00
<b>Total Sought</b>	<b>1600.00</b>
Less Security and Pet Deposits	-615.00
Monetary Order In favour of the Landlord	985.00

### Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.