

## **DECISION**

**Dispute Codes:** MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlord seeking a Monetary Order for loss of rent, liquidated damages, cost of carpet cleaning and recovery of the filing fee for this proceeding after the tenant breached the fixed term rental agreement. The landlord also sought authorization to retain the security and pet damage deposits in set off against the balance owed.

Despite having been served with the Notice of Hearing served by registered mail sent on November 4, 2009 to the address provided by the tenant on the move-out Condition Inspection Report, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to the monetary compensation claimed and authorization to retain the tenant's security and pet damage deposits in set off.

### **Background and Evidence**

This tenancy began on August 28, 2009 under a fixed term rental agreement set to end on June 30, 2010. Rent was \$1,250 per month due on or before the first day of the month and the landlord holds security and pet damage deposits of \$625 each.

During the hearing, the landlord referred to her submitted evidence of the tenant's notice to end tenancy dated October 4, 2009 and she stated that the tenant had moved out on November 2, 2009. Despite advertising starting in October, the landlord stated that she had been unable to get a new tenant until December 1, 2009 and claims loss of rent for November 2009.

While the fixed term rental agreement included a liquidated damages clause set at \$1,000, the parties signed a written agreement that the landlord could retain \$400 from the deposits against liquidated damages.

The tenant had three pets necessitating carpet cleaning at the end of the tenancy for which the landlord claims \$162.50.

## **Analysis**

Section 45 of the *Act* which sets the requirements for a tenant's notice to end a tenancy states that written notice must be at least one full month given on a day before the next rent due date. In the case of a fixed term agreement, the end of tenancy date cannot be before the end date set by the agreement. Even if this had been a month to month agreement, notice given on October 4, 2009 could not have taken effect before November 30, 2009.

Section 7 of the *Act* provides that, if either party to a rental agreement suffers a loss due to the other's non-compliance with the legislation or rental agreement, the party in breach must compensate the other.

Section 72(2)(b) of the *Act* permits me to authorize the landlord to apply the security and pet damages deposits against an amount found owing by a tenant to a landlord.

In this matter, I find that the tenant owes the landlord the rent for November 2009, the agreed upon liquidated damages, the cost of carpet cleaning and recovery of the filing fee for this proceeding, and I authorize the landlord to retain the deposits held against the balance owed as follows:

Rent/loss of rent for November 2009	\$1,250.00
Liquidated damages	400.00
Carpet cleaning	162.50
Filing fee	<u>50.00</u>
Sub total	\$1,862.50
Less retained security and pet damage deposits (no interest due)	- 1,250.00
<b>TOTAL</b>	<b>\$ 612.50</b>

## Conclusion

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$612.50, for service on the tenant.

March 4, 2010