

DECISION

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

Introduction

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

By application of November 17, 2009, the landlord seeks a Monetary Order for unpaid rent/loss of rent for August 2009, damage to the rental unit and, recovery of his filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

By application of November 10, 2009, the tenant seeks return of her security deposit in double on the grounds that the landlord failed to return it or file for dispute resolution to make claim on it within the latter of 15 days of the end of the tenancy or receipt of a forwarding address. The tenant also seeks recovery of the filing fee for this proceeding.

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and loss of rent, damages and filing fee and authorization to retain the security deposit.

The tenant's application requires a decision on whether the security deposit should be returned in double and whether the filing fee should be included.

Background, Evidence and Analysis

This tenancy began on November 15, 2008 and ended on August 8, 2009. Rent was \$1,800 per month and the landlord holds a security deposit of \$900, paid in halves on or about November 15, 2008 and May 30, 2009. The tenant had two different sub tenants during the tenancy.

During the hearing, the landlord gave evidence that the tenant had advised on July 31, 2009 that, due to a change in her employment circumstances, she was unable to continue with the tenancy. She vacated the rental unit on August 8, 2009.

Landlord's Claims

The landlord claims, and I find as follows:

Rent/loss of rent for August 2009 - \$1,400. The parties gave evidence that the tenant had advised the landlord verbally on July 31, 2009 that she would be unable to continue with the tenancy. The tenant vacated on August 8, 2009 but a downstairs tenant remained and paid his \$400 share of the August rent. Therefore, the landlord claims, and I find he is entitled to the balance of the rent for August and this claim is allowed in full.

Damage to sink and cupboards - \$1,000. The landlord withdrew this claim.

Carpet cleaning - \$145. By receipt, photographic evidence and agreement of the tenant, this claim is allowed in full.

Window coverings – \$352.23. The tenant gave evidence that she had, with the landlord's consent, taken down the window coverings which she said were past their prime, and stored them under the stairs. Neither party knew their whereabouts at the time of the hearing. However, the landlord gave evidence that they were approximately 10 years old. I find, therefore, that they were fully depreciated and make no award on this claim.

Painting materials - \$276.55. The landlord gave evidence that the rental unit had been freshly painted shortly before the tenancy began and needed repainting at the end of the tenancy. The landlord said he had done the work himself and claims only for the cost of materials. Based on submitted receipts and photographic evidence of paint chips and patches on some of the walls, and given that the landlord claims materials only, I find that this claim is allowed in full.

Filing fee - \$50. Having found substantial merit in the landlord's application, I find that he should recover his filing fee from the tenant.

Tenant's Claims

The tenant claims return of her security deposit in double.

Section 38(1) of the *Act* provides that, within the latter of 15 days if the end of the tenancy or receipt of a forwarding address for the tenant, the landlord must either return the security deposit or file for dispute resolution to make claim upon it.

Section 38(6) of the *Act* states that, if the landlord does not comply with section 38(1), the landlord must return the security deposit in double.

In this instance, the tenant claims that she provided the landlord with a forwarding address on August 8, 2009 during the move-out inspection; however, the tenant had no documentary or corroborating evidence to support her claim that she had provided the forwarding address.

The landlord stated that he had been anxious to file an application to recover the unpaid rent and for the damage to the rental unit, but was unable to do so until he received the tenant's application because he had no forwarding address for her.

I find, on the balance of probabilities, that the landlord did not receive the forwarding address at the end of the tenancy, and that he made application within 15 days of receiving it with the tenants application of November 10, 2009.

Therefore, the tenant's application is dismissed and the deposit remains available for set off against the landlord's award.

Including filing fee and authorization to retain the security deposit in set off, I find that the tenant owes the landlord an amount calculated as follows:

Amount owed to landlord		
Rent for August 2009	\$1,400.00	
Carpet cleaning	145.00	
Painting materials	276.55.	
Filing fee	<u>50.00</u>	

Sub total	\$1,871.55	\$1,871.55
Tenant's Credits		
Security deposit paid November 15, 2008	\$450.00	
Interest to date	.87	
Security deposit paid May 30, 2009 (no interest due)	<u>450.00</u>	
Sub total	\$900.87	- 900.87
TOTAL balance owed to landlord		\$ 970.68

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$970.68, for service on the tenant.

March 10, 2010