

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent and utilities, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The landlord's Application included a claim for compensation detailed in a written summary submitted with the Application. I have considered the portion of the landlord's claim for compensation for damage to the rental unit and find that the landlord made a clerical error by neglecting to select the section of the Application requesting compensation for damage or loss.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for unpaid rent and utilities?

May the landlord retain the deposit in partial satisfaction of the claim for compensation?

Is the landlord entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed that the tenancy commenced on November 15, 2008, that rent was \$495.00 per month, with no set payment date in each month and that on November 15, 2008 a deposit in the sum of \$350.00 was paid.

A move-in and move-out condition inspection was not completed.

The landlord is claiming the following compensation:

Unpaid rent December 2008	247.50
Nov. 15 2008 to Jan. 27 2009 electricity	690.41
Jan. 27 – Mar. 25 2009 electricity	449.56
March 25 – march 31 2009 electricity	19.63
Water bill November 15 2008 to March 31, 2009	78.95
Interest	74.28
Lock change	70.00
Cleaning	100.00
Carpet stain removal	50.00
Yard cleaning	65.00
Cable bill	46.00
	3,376.33

The landlord provided copies of letters sent and dates that she spoke to the tenant with requests for rent and utility payments. Copies of the utility bills were mailed to the tenant with the letters. On March 18, 2009 the tenant told the landlord that the tenancy had ended. The landlord is claiming unpaid rent to the end of March, 2009.

The landlord submitted a copy of the annual Central Kootenay water bill issued for the period January to December 2009 in the sum of \$386.00 for a 2 year period. The landlord has calculated a pro-rated amount owed by the tenant for 4.5 months.

The landlord's evidence indicates that the yard was left with a large amount of dog dirt, that a carpet was stained and that the key was not returned. The rental unit required some cleaning at the end of the tenancy, supported by a June 25, 2009 letter written by the new tenants, who found dirty dishes in the sinks, the stained carpet and dirty yard.

The landlord did not supply receipts for the items related to the lock change, cleaning, stain removal or yard cleaning. The interest charges have been applied by the landlord at a rate of 2.5% on the amount owed.

The tenant initially testified that it was on approximately January 21, 2009 that he told the landlord the tenancy had ended. The tenant then stated that he gave verbal notice ending the tenancy on February 21, 2009, when the landlord had called him requesting payment. The tenant disputes the landlord's claim that it was not until March 18, 2009 that the landlord was informed of the end of the tenancy.

The tenant did not dispute the payment of utilities as a term of the verbal tenancy agreement. During the hearing the tenant offered the landlord a settled agreement; the landlord rejected the offer.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based upon the testimony of both parties, I find that the tenancy commenced on November 15, 2008 and that rent was due before the end of each month in the sum of \$495.00 and that a deposit in the sum of \$350.00 was paid on November 15, 2008.

I find that the tenancy ended effective March 31, 2009. I base this decision on the consistent testimony of the landlord and the absence of a written notice given by the tenant ending the tenancy, as required by section 45 of the *Act*. This was a month-to-month tenancy which could have been ended by the tenant giving the landlord written notice at least one day before the end of a month. For example, written notice given on February 27 would be effective on March 31.

Therefore, I find, in the absence of written notice ending the tenancy, that the landlord is entitled to compensation in the sum of \$1,732.50 for unpaid rent from December 2008 to March 2009, inclusive.

I have considered the utility charges and bills submitted by the landlord and find that the tenant was responsible for the utilities costs during the tenancy. This is based upon the undisputed testimony of the landlord.

The electrical bill issued on November 25, 2008 included an account transfer fee of \$406.97; therefore, I have discounted the amount claimed, as it appears the bill was transferred to the landlord from another account holder and I find that this transfer is not the responsibility of the tenant. Therefore, I find that the electric utility cost to the tenant, from November 15 to November 25, 2008 is \$14.03.

I find that the landlord is entitled to the remaining electrical bill compensation claimed in the sum of \$1,051.44; costs which are verified by bills submitted as evidence.

I find that the landlord is entitled to water bill costs in the sum of \$72.08; the average daily water fee, for the number of days this tenancy lasted.

In the absence of any testimony by the tenant disputing the condition of the rental unit at the end of this tenancy and return of the key, I find, in the absence of documents verifying the costs to the landlord, that the landlord is entitled to a nominal sum of \$50.00 for the lock, cleaning, stain removal and yard cleaning. I base this decision on the evidence submitted by the landlord which supports the loss claimed.

I find, based upon the cable bill submitted as evidence, that the landlord is entitled to compensation in the sum of \$46.00.

I find that the interest charge levied by the landlord is a fee imposed by the landlord in breach of Residential Tenancy Branch regulations governing fees and dismiss this portion of the claim.

	Claimed	Accepted
Unpaid rent January – March 2009	1,485.00	1,485.00
Nov. 15 to Nov. 25 2008 electricity	108.16	14.03
Nov. 25 to January 27 2009 electricity	582.25	582.25
Jan. 27 – March 25 2009 electricity	449.56	449.56
March 25 – March 31 2009 electricity	19.63	19.63
Water bill November 15 2008 to March 31, 2009	78.95	72.08
Interest	74.28	0
Lock change	70.00	0
Cleaning	100.00	0
Carpet stain removal	50.00	0
Yard cleaning	65.00	0
Nominal amount		50.00
Cable bill	46.00	46.00
	3,376.33	2,966.05

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$350.67, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$3,016.05, which is comprised of unpaid rent and damages and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$350.67, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,665.38. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 06, 2010.

Dispute Resolution Officer