DECISION

Dispute Codes:

MNR, 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 a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on March 15, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenants via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service to each respondent.

The landlord applied for dispute resolution on February 8, 2010 at the Courtenay Service BC office. The landlord completed the Application and her agent delivered to the Application to the Service BC office. The landlord testified that the Service BC office procedure includes a telephone call to the landlord once the Notice of hearing is ready for the landlord. The landlord or her agent did not receive a call and did not receive the Notices until March 15, 2010; at which time the Notices were sent via registered mail to each of the tenants.

Service was completed to the written forwarding address provided to the landlord by the tenants in a letter dated January 20, 2010. The landlords confirmed receipt of this letter from the tenants, sent to them via regular mail.

On April 29, 2010, the landlord's agent sent the tenant's a single registered mail package to the tenant's forwarding address in a second attempt to serve the tenants with Notice of this hearing. The landlord was concerned as the tenants had not claimed the Notices sent on March 15, 2010.

I find that the tenants were served with Notice of this hearing effective 5 days after the registered mail was sent on March 15, 2010. Section 59 of the Act requires a landlord to serve a respondent within 3 days of making the Application; however, I find that the tenants were provided with ample notice of this hearing and that there is no prejudice to the tenants as a result of the delay in service initiation. Section 90 of the Act determines that mail is served effective on the 5th day after mailing; whether the mail is claimed or not.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

Preliminary Matter

The Application was amended to reflect the information provided in the details of the dispute section which requests loss of revenue.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid utilities?

Is the landlord entitled to a monetary Order for damages or loss?

Is the landlord entitled to retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord is making the following monetary claim:

Hydro November 13 – December 4, 2009	57.84
Hydro January 21 – February 5, 2010	21.55
Hydro February 6 – April 6, 2010	123.08
Carpet cleaning	154.98
Loss of rent revenue February – May, 2010	2,400.00
	2,983.40

The Application listed estimated costs for Hydro and carpet cleaning; the landlord is now claiming costs based on receipts provided as evidence.

This fixed-term tenancy commenced on November 13, 2009 and was to end on May 31, 2010. Rent was $600.00 per month due before the first day of each month. The tenancy agreement included a clause that requires the tenant to mail post-dated cheques to the landlord's service address via registered mail; the tenants could also pay rent by placing the payment in the landlord's bank account via direct deposit. This page of the tenancy agreement was initialed by the tenants.

The tenants paid a pet and security deposit in the sum of $300.00 each. The tenants had one cheque returned as NSF and then told the landlord they would send them post-dated cheques. On December 31, 2009 the rent was not paid and a 10 Day Notice to End Tenancy for Unpaid Rent was issued on January 6, 2010 and posted to the tenant's door. The landlord was not yet in possession of any post-dated cheques.

A letter written by the tenants on January 20, 2010, indicated that the tenants had sent the landlord post-dated cheques and that the landlord was in possession of those cheques and, therefore, should not have issued the Notice ending the tenancy. The tenant's letter does not state when the cheques were mailed to the landlord, and indicates frustration at their inability to reach the landlord by telephone. The tenants responded to the Notice and moved out of the rental unit on January 20, 2010; the effective date of the Notice. The tenant's letter requested return of their pet and security deposits totaling $600.00.

The landlord attempted to reach the tenants via email on January 5, 2010; a method they had used for prior communication; but the tenants did not respond. The landlord eventually purchased a pre-paid telephone card in order to reach the tenants as the landlord believed the tenants were blocking the landlord's incoming calls. The tenants also did not respond to text messages sent by the landlord, until January 12, 2010;

when the tenants left a voice mail message for the landlord stating the cheques had been mailed with a Christmas card.

The tenants' January 20, 2010 letter indicated that the tenants could not reach the landlord after the Notice had been issued; that they had left daily messages with the landlord's contact numbers; seeking some sort of remedy.

The tenancy agreement included a service address for the landlord; a postal box company. On January 12, 2010, the landlord was able to speak with the tenants who told her that the rent cheques had been sent to her via mail.

The witness, who works for the postal box service, testified that any registered mail that is received is logged and the recipient contacted. The witness recalled being contacted by the landlord on either January 10 or 11, 2010, asking if there was any mail from the tenants. An envelope, sent by regular mail, was then opened, which contained post-dated cheques for the landlord. The January rent cheque was then cashed.

The tenancy agreement required the tenants to pay 48% of the Hydro bill that was placed in the name of an occupant who lived in a separate unit. The January 20, 2010, letter written by the tenants acknowledged that they owed 48% of Hydro to that date. The landlord provided copies of Hydro bills that indicate the tenant's share of Hydro to January 20, 2010.

Page 5 of 8, clause 3)c) of the tenancy agreement requires the tenants to have the carpets professionally cleaned at the end of the tenancy. The tenants did not have the carpets cleaned. The landlord stated this was required as the tenants had been allowed to have a dog. The landlord submitted an undated receipt for the cost and made the payment on May 6, 2010.

The landlord placed advertisements on a popular web site on January 25, February 7, 27 and April 13, 2010; in an attempt to locate suitable tenants. The rental unit is in the small community of Port Hardy and the landlord insists on fixed-term agreements over the winter as it is very difficult to locate tenants over the winter months. On March 16, 2010, the landlord also placed an advertisement in the local newspaper and currently has another advertisement running; the unit has yet to be rented. The landlord is willing to adjust the rent for potential tenants who have a source of income, good credit information and references. The landlord is claiming loss of revenue from February to May, 2010 inclusive.

Analysis

In relation to the Notice ending the tenancy, I have considered the terms of the tenancy agreement, section II, page 2 of 8, which is initialed by the tenants. The section of the agreement detailing rent payments requires the tenants to send any post-dated cheques to the landlord via registered mail. The landlord had chosen this method of service as they would receive notification of the mail, which makes the delivery reliable and verifiable.

The Notice ending the tenancy was posted to the door on January 6, 2010 and I find, pursuant to section 90 of the Act, was served on January 9, 2010. As provided by

section 46(4) of the Act; the tenants could have paid the rent or disputed the Notice by January 14, 2010, which would have rendered the Notice invalid or resulted in a hearing to determine the validity of the Notice. Even if the tenants had received the Notice on January 6, 2010, they had until January 11, 2010 to pay the rent or dispute the Notice.

As the landlord was in receipt of the rent payments by January 11, 2010; at the latest, I find that the tenants did pay their rent within 5 days of service of the Notice. The cheque was cashed successfully and the tenancy should have continued. However, the tenants had determined that they would move out, despite their January 20, 2010, letter, confirming the mailing of post-dated cheques. Even though the cheques were mailed by a method that was not in compliance with the terms of the tenancy agreement, the landlord and the witness confirmed receipt of the cheques within the 5 day time frame following service of the Notice ending the tenancy.

From the testimony and the evidence before me, it is clear that communication between the parties had become difficult. The landlord alleges the tenants blocked their calls and would not respond via methods of communication previously used. The tenants alleged in their January 20, 2010, letter, that the landlord would not respond to their messages.

Much of this confusion could have been avoided if the tenants had used the method of mail for the post-dated cheques that had been agreed to as a term of the tenancy agreement. The landlord could also have mitigated the need for a Notice if their non-registered mail had been checked more frequently. I have no evidence before me as to when the tenants actually mailed the post-dated cheques. Therefore, I find that the failure of the tenants to adhere to the term of the tenancy agreement which required cheques to be sent via registered mail was the factor that resulted in the landlord issuing the Notice ending the tenancy.

Therefore, based on the testimony of the landlord, the witness and, on the balance of probabilities, I find that the tenants chose to end their tenancy prior to the fixed term end date of May 31, 2010. The tenants did pay their rent within 5 days of receiving the Notice and I find that the January 11, 2010 rent payment rendered the Notice invalid and that the tenancy should have continued.

I also base my decision on Section 45 of the Act which sets out the requirements for Notice given, ending a tenancy; which states in part:

> *(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
>
> > *(a) is not earlier than one month after the date the landlord receives the notice,*
> >
> > *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
> >
> > *(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

As I have found that the Notice ending the tenancy issued on January 6, 2010, was invalidated due to payment received within 5 days; this tenancy continued and was to end on the last date of the fixed term; May 31, 2010. Therefore, pursuant to section 45

and 67 of the Act, I find that the landlord is entitled to compensation for loss of rent revenue from February to May 2010, inclusive in the sum of $2,400.00.

I find that the tenants owed $57.84 in Hydro costs from November 13 to December 4, 2009, inclusive. The tenants remained in the rental unit until January 20, 2010; another 46 days. The hydro bill from December 5, 2009 to February 4, 2010 was $515.63. The daily usage was $8.45. I find that the tenants owe $4.06 per day for 46 days; $186.76. As the tenants vacated the rental unit, I find that they were no longer responsible for heating costs and the balance of the claim for Hydro is dismissed.

The landlord is holding deposits in the sum of $600.00. As the landlord received the tenant's January 20, 2010 written forwarding address by way of regular mail, I find that this letter was served to the landlord on January 25, 2010. The landlord submitted their Application claiming against the deposit on February 8, 2010; within fifteen days of receipt of the written forwarding address.

Therefore, pursuant to section 38(1) of the Act, I find that landlord has claimed against the deposits paid within the time frame required by the Act and that the landlord may retain the deposits paid, in partial satisfaction of the claim for compensation. No interest has accrued on the deposits.

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

Therefore, the landlord is entitled to:

	Claimed	Accepted
Hydro December 5 – January 20, 2010	225.95	186.76
Hydro January 21 – February 5, 2010	21.55	0
Hydro February 6 – April 6, 2010	123.08	0
Carpet cleaning	154.98	154.98
Loss of rent revenue February – May, 2010	2,400.00	2,400.00
	2,983.40	2,799.58
Plus the filing fee		2,849.58
Less the deposits paid		2,249.58

Conclusion

I find that the landlord has established a monetary claim in the amount of $2,849.58**,** which is comprised of $2,799.58 in compensation, loss and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the deposits in the sum of $600.00, in partial satisfaction of the claim for compensation.

Based on these determinations I grant the landlord a monetary Order for the balance in the sum of **$2,249.58.** In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 17, 2010.

Dispute Resolution Officer