

Decision

Dispute Codes: MND, MNR

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order for rental arrears and damage to the rental premises pursuant to Section 67.
2. To recover the filing fee from the landlord for the cost of this application under section 72.

The tenants did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that he served the tenants with the Application for Dispute Resolution hearing package by way of registered mail sent February 12 and 15, 2010 to the forwarding addresses supplied by the tenants. The landlord testified that the hearing package sent to X was returned by Canada Post unclaimed. The hearing package sent to Y was recorded as having been received. In both cases I accept that the tenants were deemed duly served with the Application for Dispute Resolution hearing package by way of registered mail.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord is entitled to a monetary order for rental arrears, damage to the rental premises and a recovery of the filing fee for this application.

Background and Evidence

The landlord testified that this tenancy was established by way of a fixed term tenancy agreement commencing on March 3, 2009. The tenancy agreement provided as evidence was to expire on October 31, 2009. Rent was fixed at \$1100.00 per month. A security deposit of \$550.00 was paid on March 15, 2009.

The landlord testified that the tenant did not pay full rent in August 2009, paid \$1650.00 in rent for September 2009, paid \$1350 for October 2009, and did not pay rent for November 2009. The landlord was not certain as to the exact date when the tenants moved out, but testified that the tenants had vacated the rental unit by the end of November 2009.

A portion of this claim is for unpaid rent between August 2009 and November 2009 as noted in the following table.

Month	Rent Due	Rent Paid	Rent Difference
August 2009	1100.00	0	-1100.00
September 2009	1100.00	1650.00	550.00
October 2009	1100.00	1350.00	250.00
November 2009	1100.00	0	-1100.00
Total Rental Arrears	4400.00	3000.00	-1400.00

The landlord also applied for a monetary order of \$1182.63 for repairs that he maintained were necessary as a result of damage caused by the tenants. These repairs included damage that the landlord alleged were caused by the tenants to doors and holes in the walls. The landlord testified that one of the tenants had agreed that the tenants were responsible for damage to the rental premises and were not disputing the

monetary order for the repairs that the landlord was claiming. However, the landlord did not provide any move-in or move-out condition inspection reports, photographs of the damage caused by the tenants, or any written statement from the tenants admitting responsibility for damage to the rental premises.

The landlord testified that the tenants caused damage to the rental premises that were included in a list of repairs included in a December 10, 2009 invoice from a contractor. The landlord testified that this \$1121.45 invoice included labour and materials. He also referred to a number of other invoices he submitted. Some of these invoices included materials cited in the \$1121.45 invoice from the contractor; others were for additional materials. The invoices exceed the \$1182.63 requested in the landlord's application.

Analysis

Monetary Order for Rental Arrears

I accept the evidence of the landlord and find that the landlord is entitled to the requested monetary order of \$1400.00 for unpaid rent from August 2009 until November 2009.

Monetary Order for Damage to Rental Premises

The landlord did not provide sufficient evidence to demonstrate that the repairs undertaken resulted from damage committed by the tenants during the course of the tenancy. Although the landlord submitted a number of invoices, the landlord has not demonstrated that the tenants were responsible for damage or replacement of some of the items (e.g., keys, hot water heater). Other invoices appear to be for items that could result from regular maintenance that may or may not be attributable to damage caused by the tenants (e.g., paint, switches). In the absence of any condition inspection reports, photographs, or written statements from the tenants, I do not find that the landlord has met the burden of proof required to obtain a monetary order against the tenants for damage to the rental premises.

Security Deposit

The landlord testified that he continued to hold a security deposit of \$550.00 plus interest from March 15, 2009 to the date of this decision. Over that period, no interest is owing on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Residential Tenancy Act*, I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Filing Fee

As the landlord was successful in part of this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I am making an Order in favour of the landlord as follows:

Rental Arrears	\$1400.00
Recovery of Filing Fee for this application	50.00
Less Security Deposit and interest	-500.00
Total Monetary Award	\$950.00

The landlord is provided with a formal Order in the above terms. 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.