

DECISION

Dispute Codes: MNDC, MND, MNSD and FF

Introduction

These application was brought by the landlord seeking a Monetary Order for damage or loss under the legislation or rental agreement, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As a preliminary matter, the landlord states that she has served the tenant all documents pertaining to this matter by way of the Public Guardian and Trustee of British Columbia with the consent of that office. As authorized under section 71 of the *Act*, I find that service has been effectively made for the purposes of the *Act*.

Despite having been so served, neither the tenant nor a representative of the Public Guardian called in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the claims submitted, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

Background, Evidence and Analysis

This tenancy began on February 2, 2009 and ended on or about December 21, 2009 when a Bailiff, acting on a Writ of Possession, evicted the tenant. Rent was \$750 per month and the landlord held a security deposit of \$375.

By a Decision granted on October 22, 2009, the Dispute Resolution Officer awarded the landlord with an Order of Possession pursuant to a Notice to End Tenancy for cause. In that decision, she authorized the landlord to retain the \$50 filing fee from the tenant's security deposit, so only \$325 of the deposit remains for consideration in the present hearing.

As a matter of note, that decision was subject to a Review Hearing on December 10, 2010 with the result that the original decision and award were upheld.

In the present application, supported by 65 photographs and receipts, the landlord claims and I find as follows:

Bailiff's Fees - \$1,011.09. Given that the tenant failed to honour a duly served Order of Possession, the landlord was forced to incur the expense of the bailiff to effect the eviction. As per the submitted receipt, I find the tenant responsible for this claim in full.

Court fees - \$111. While the landlord has submitted a receipt in support of this claim, I do not have the authority to award costs incurred through the court. Therefore, this claim is dismissed.

Carpet replacement - \$2,119. While I have some discretion to depreciate damaged property, in this matter, on the basis of the move-in condition inspection report showing carpets in good condition at the beginning of the tenancy, I find that depreciation is not

appropriate. Referring to photographic evidence of dense burns and accumulated filth throughout all of the carpeting, the landlord stated that the tenant had held “open house” for homeless persons and others during the last two months of the tenancy resulting in a police attendance on a number of occasions. I find that the landlord is entitled to full reimbursement for the receipted amount of \$2,119.

Cabinets replacement - \$675. On the basis of photographic evidence showing broken kitchen and bathroom cabinets, and receipt, I find that this claim is allowed in full.

Rubbish removal - \$210. This receipted claim, supported by photographic evidence of piles of refuse, is granted in full.

Paint materials - \$188.16. The landlord claims this amount with receipt for paint materials only and has not claimed for two days labour for painting and patching. This claim is allowed in full.

Filing fee - \$50. Having found full merit in the landlord’s application, I find that she should recover the filing fee for this proceeding from the tenant.

On balance, given the amount of damage revealed in the photographs, I find that the landlord’s claims have been abundantly fair and she has met her duty to do whatever is reasonable to minimize her losses as required under section 7(b) of the *Act*.

Thus, including authorization to retain the remaining balance of the security deposit, I find that the tenant owes to the landlord an amount calculated as follows:

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|--------------------|------------|
| Bailiff’ fees | \$1,011.00 |
| Carpet replacement | 2,119.00 |

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|---|-------------------|
| Cabinets replacement | 675.00 |
| Rubbish removal | 210.00 |
| Painting materials | 188.16 |
| Filing fee | <u>50.00</u> |
| Sub total | \$4,253.16 |
| Less retained balance of security deposit (No interest due) | <u>- 325.00</u> |
| TOTAL | \$3,928.16 |

Conclusion

In addition to authorization to retain the remaining balance of the security deposit of \$325.00, the landlord's copy of this decision is accompanied by a Monetary Order for \$3,928.16, enforceable through the Provincial Court of British Columbia, for service on the tenant.

May 28, 2010