

DECISION

Dispute Codes OPL, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. An Order of Possession for Landlord's Use;
2. A monetary Order for unpaid rent;
3. An Order to be allowed to retain the security deposit; and
4. An Order to recover the filing fee paid for this application.

Both parties appeared and gave evidence under oath. I am satisfied that the tenant was duly served with the Notice to End Tenancy and the Application for Dispute Resolution in this matter.

Background and Evidence

The tenant was served with a 2 month Notice to End Tenancy for Landlord's Use of Property served because the landlord had sold the rental unit. The purchasers intended to occupy the rental unit and instructed the landlord to give the tenant notice to vacate. The effective date of the Notice was March 31, 2010. The landlord testified that the tenant refused to confirm that he would vacate by March 31, 2010. The landlord testified that the tenant eventually vacated on or about March 15, 2010. The landlord testified that the tenant left garbage behind which cost \$486.00 to remove. The landlord testified that the tenant took a bed frame that was left by her for the tenant's use and that this had a value of \$200.00. Further the landlord says the tenant did not clean the rental unit and the landlord hired her sister to clean the rental unit at a cost of \$300.00. Except for the bed frame the landlord submitted receipts for the items claimed. The landlord testified that in addition to her claim for the costs of these items she is seeking February's rent of \$1,200.00 which was not paid and rent for the period March 1-16,

2010 at a rate of \$619.00. The landlord testified that because the tenant moved out on March 15 or 16 he was not entitled to the 1 month's compensation due when a 2 month Notice to End Tenancy is served.

The tenant agrees he has not paid rent for February or March 2010. The tenant says the landlord harassed him over and over following service of the 2 month Notice to End Tenancy to get him to move out earlier. The tenant says he did not remove the garbage or clean the rental unit because, after he moved out on March 15, 2010 he thought the landlord changed the locks to the rental unit and he would not be able to gain access to it to clean or remove garbage. The tenant says he has no knowledge of the bed frame.

The landlord denies changing the locks and says the tenant had until March 31, 2010 to clean the rental unit and remove the garbage. The landlord says the new owners moved in on April 3, 2010 at which time the locks were changed.

Analysis

Sections 51 and 52 sets out the rules regarding compensation when a 2 month Notice to End Tenancy is given under Section. It states in part:

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50

(2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

The evidence shows that the tenant has now vacated the rental unit. The evidence also shows that the tenant did not pay rent for February or March 2010. For that two month period the rental arrears would be \$2,400.00, however, the tenant was entitled to 1 months' free rent as compensation for the Notice to End Tenancy given under Section 49, this is true whether he moved out earlier or not. Therefore the landlord's claim for rental arrears is reduced to \$1,200.00.

With respect to the other sums claimed, I accept the landlord's evidence that the locks remained unchanged at the rental unit until after this tenancy ended. I also accept her undisputed evidence that the tenant left the unit without cleaning and he left garbage that had to be removed. I will therefore allow the landlord's claim in this regard in the total amount of \$786.00.

The landlord claims there was a bed frame left for the tenant's use that is now gone. The tenant denies any such frame existed. I find there is insufficient evidence that the bed frame existed and I will decline to make an award in this regard.

As the landlord has been mostly successful in this application I will allow her to recover the filing fee paid for this application.

Finally, as I have made a monetary award in favour of the landlord and she holds a security deposit I will allow her to retain that deposit and accrued interest.

Calculation of Monetary Award in favour of the landlord:

Rental Arrears	\$1,200.00
Award for cleaning and garbage removal	786.00
Filing Fees for the cost of this application	50.00
Less security deposit and interest (no interest payable)	-600.00
Total Monetary Award payable by the tenant to the landlord	\$1,436.00

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. 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.