

DECISION

Dispute Codes: MNR, MND, MNSD and FF

Introduction

This matter was originally set for hearing on April 30, 2010, but shortly after convening, it was adjourned to the present sitting on the tenant's request as noted in my Interim Decision of April 30, 2010. At issue is the landlord's application for a Monetary Order for unpaid rent, damage and loss, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and the damage claims presented based on whether the damage or losses are proven, whether they are attributable to the tenant, whether the amounts claimed are fair and substantiated, and whether the landlord has acted reasonably to minimize the claimed costs.

Background and Evidence

This tenancy began on May 1, 2009 and ended on November 30, 2009. Rent was \$2,796 per month and the landlord holds a security deposit of \$1,325.

The tenant contested whether the tenancy is new or continuance of a tenancy begun in 2005 with his friend and associate who was also in attendance. The tenant based this challenge on the fact that the landlord had never signed the fixed term tenancy agreement that the tenant had signed on May 1, 2009.

However, I find that by the tenant signing the agreement, he was well aware that the tenancy was a new one starting on May 1, 2009. The tenant further introduced disputes

with respect to a pet damage deposit and the security deposit issues between the former tenant and the landlord. On that question, by letter of May 1, 2009, the tenant instructed the landlord to, "Please retain the original damage deposit...."

In addition, by letter of May 1, 2009 from the former tenant to the landlord, she advised that the new tenant, "is willing to take over the apartment with a new lease beginning May 1, 2009..." In the same letter, she instructs that, "The damage deposit may stay in place as I have been reimbursed by [*new tenant's first name*]."

There is still an outstanding issue between the former tenant and the landlord with respect to the pet damage deposit with interest and the interest only on the security deposit, but that is a matter between the former tenant and the landlord and I would not consider it further in the present hearing.

One further issue arose concerning some items left in the storage unit for the rental unit. Both the present and former tenant stated they had left nothing behind and had no interest in the contents of the storage unit. They agreed that they had no objection to the landlord disposing of any such materials as might remain in it.

As to the matters that are material to the present hearing, the landlord makes claim for a rent shortfall for September 2009

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In evidence, the landlord submits a copy of a dishonoured cheque in the amount of \$2,100 dated September 1, 2009. The landlord explained that the tenant had paid his rent by two cheques each month, one drawn on his corporate account and the other on his personal account. The landlord stated that the tenant had subsequently replaced the dishonoured cheque but did so with a cheque for the smaller amount, leaving a shortfall of \$1,404, a claim the tenant was unable to disprove.

The landlord further claimed \$446.25 in general cleaning costs, supported by an invoice from a professional cleaning company, dated May 28, 2010. Both the tenant and the former tenant gave evidence that the rental unit was immaculate at the end of the tenancy and any deficiencies were the result of a flood for which they bore no responsibility. The landlord conceded that there had been no move-in or move-out Condition Inspection Reports completed.

The landlord also claimed \$75 for loss of a garage door remote control unit and \$35 for replacing unreturned keys to the rental unit. The tenant and former tenant both gave evidence that the remote and keys had been left in the rental unit when they left. The landlord said he attended the rental unit for the first time two days later but was unable to find the keys. He did not submit receipts for the replacement costs.

The landlord withdrew claims for repair of a broken vacuum cleaner and carpet cleaning.

Analysis

I find, on the balance of probabilities, that the landlord is correct on the question of the rent shortfall for September 2009 and that he is owed \$1,404 on that claim.

However, in the absence of move-in and move-out Condition Inspection Reports for comparative purposes, and in view of the evidence of the tenant and former tenant that the rental unit was left immaculate, I must find that the landlord has not met the burden of proof required of a claimant on the cleaning claim. I note also that, otherwise, an invoice dated May 28, 2010 for cleaning pertaining to a tenancy ended on November 30, 2009 invites some question.

Similarly, I find that the landlord has not met the burden of proof on the question of the remote and key fobs and the claims must be dismissed.

Having found merit in the larger issue in the landlord's application, I find that he should recover the filing fee for this proceeding from the tenant.

On balance, including authorization to retain the security deposit in set off and recovery of the filing fee for this proceeding, I find that the tenant owes to the landlord an amount calculated as follows:

Rent shortfall for September 2009	\$1,404.00
Filing fee	<u>50.00</u>
Sub total	\$1,454.00
Less retained security deposit from May 1, 2009 (No interest due)	- <u>1,325.00</u>
TOTAL	\$ 129.00

Conclusion

This was a month to month tenancy that began on May 1, 2009, separate from the previous tenancy.

In addition to the authorization to retain the security deposit in set off against the balance owed, the landlord's copy of this decision is accompanied by a Monetary Order for \$129, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 16, 2010