

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages to the rental unit, compensation for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord stated that on April 8, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male tenant by registered mail. A Canada Post tracking number and copy of the receipt was provided as evidence of service. The landlord did not serve the female tenant with Notice of the hearing.

Residential Tenancy Branch Rules of Procedure require that each respondent be serviced with Notice of a hearing. Therefore, as the female tenant was not served with Notice, I find that the claim against the female tenant is dismissed.

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

Issue(s) to be Decided

Is the landlord entitled to compensation for damages to the rental unit?

May the landlord retain the deposit in partial satisfaction of the claim for compensation?

Is the landlord entitled to compensation for damages or loss under the *Act*?

Background and Evidence

This fixed-term tenancy commenced on July 1, 2009; for a one year term ending on June 30, 2010. Rent was \$1,350.00 due on the first day of the month. A deposit in the sum of \$650.00 was paid on June 12, 2009.

The tenants moved out of the rental unit at the end of March, 2010; without mutual agreement of the landlord. The tenants did not give the landlord written Notice.

The landlord was able to mitigate her loss and found new tenants for May 1, 2010; and is claiming compensation for loss of rent revenue for April, 2010, in the sum of \$1,350.00.

The landlord submitted photographs of the rental unit at the end of the tenancy. A move-in and move-out condition inspection report was not completed. The landlord is claiming cleaning costs for the stove windows and carpets, in the sum of \$300.00.

The landlord did not supply any receipts for the cleaning costs and paid cash for the carpet cleaning.

Analysis

In the absence of evidence to the contrary, I find that the tenant failed to meet the terms of the fixed term tenancy by moving out prior to the end date of the fixed term. Section 45 of the Act allows a tenant to give written Notice ending a fixed term, which takes effect no earlier than the end of the fix-term. Therefore, I find that the landlord is entitled to compensation for loss of April 2010, rent in the sum of \$1,350.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As the landlord has not provided any verification of the damage claimed, such as a receipt for cleaning or carpet cleaning, I find that this portion of the landlord's claim is dismissed.

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

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of \$650.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,400.00, which is comprised of \$1,350.00 in loss of April, 2010, rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$750.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The claim for cleaning costs is dismissed.

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: July 30, 2010.

Dispute Resolution Officer