

DECISION

Dispute Codes:

MNDC, MNSD, 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 unpaid rent, for damage or loss and to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on March 12, 2010, copies of the Application for Dispute Resolution, evidence and Notice of Hearing were sent to the tenant by registered mail. A Canada Post tracking number and copy of the receipt was provided as evidence of service. The landlord provided a copy of a note from the tenant dated March 2, 2010, providing the tenant's forwarding address, requesting return of the deposit.

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

Preliminary Matter

A copy of the move-out condition inspection report included as evidence was not received. The landlord was asked to submit a copy of this document after the conclusion of the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and damage or loss under the Act?

May the landlord retain the deposit paid?

Is the landlord entitled to the filing fee cost?

Background and Evidence

The tenancy commenced on December 1, 2007. Rent was \$997.00 per month, due on the first day of each month. A deposit in the sum of \$467.50 was paid on November 27, 2007.

The landlord provided a copy of a written notice ending the tenancy, given by the tenant on February 17, 2010; ending the tenancy effective February 28, 2010. On February 28, 2010 a move-out condition inspection was completed; the tenant did not sign the report agreeing to deductions from the deposit.

The landlord is claiming the following:

Paint touch-up	150.00
Unpaid March 2010 rent	997.00
Late fee	25.00
	1222.00

The landlord submitted a CD of photographs taken at the end of the tenancy. The photos indicated that the rental unit was left in a state requiring some cleaning to the stove, the floors, walls and cupboards.

The walls show some nicks and dents. The unit was last painted prior to the start of the tenancy. The landlord's staff member provided the labour for the paint touch-ups.

During the hearing the landlord confirmed that the unit was rented on March 15, 2010. The landlord is claiming unpaid rent due to improper notice given.

The landlord is claiming a late payment fee of \$25.00.

Analysis

In the absence of evidence to the contrary, I find that the tenant did not provide notice ending the tenancy as required by section 45 of the Act. The written notice given on February 17, 2010, was effective March 31, 2010. The landlord has mitigated their loss, as required by section 7 of the Act; therefore, I find that the landlord is entitled to unpaid rent owed from March 1 to 14, 2010 in the sum of \$498.50.

I find that the painting required in the rental unit was due to normal wear and tear and there is no evidence before me that the tenant was negligent. Therefore, I dismiss the painting claim.

I find that the tenant did not leave the rental unit in a reasonably clean state, as required by section 37 of the Act. The photographs demonstrated the need to clean areas of the unit such as the walls, floors and cupboards and I find that the landlord is entitled to compensation as claimed.

The term in the addendum related to late fees does not conform with Residential Tenancy Regulation 7(1)(d), which limits late fees to a maximum of \$25.00. As the addendum levies a \$50.00 late fee, I find that the term is unenforceable.

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

I find, pursuant to section 38 of the Act, that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$467.50 plus interest in the sum of \$7.69, in partial satisfaction of the monetary claim.

Therefore the landlord is entitled to the following:

	Claimed	Allowed
Cleaning 2 hours @ 25.00	50.00	50.00
Unpaid March 2010 rent	997.00	498.50

Late fee	25.00	0
	1222.00	548.50

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$598.50, which is comprised of cleaning costs and unpaid rent in the sum of \$548.50 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 \$475.19, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$123,31. 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 balance of the monetary claim 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 08, 2010.

Dispute Resolution Officer