

DECISION

Dispute Codes:

MNDC, MNR, MND, 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, compensation for damage to the rental property, damages or loss, 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions during the hearing

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit and for damages or loss under the Act?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

This fixed term tenancy commenced on September 15, 2009. Rent in the sum of 1,200.00 was due on the first day of the month. A security and pet deposit was paid in the amount of \$600.00 each on August 15, 2009. A move-in condition inspection and move-out inspection was completed.

The landlord has submitted the following claim:

March 2010 rent	1,200.00
Cleaning	250.00
Showing and advertising the unit	250.00

Clean carpet in common areas	250.00
	3,150.00

The tenants moved out effective March 1, 2010. The parties agreed during the hearing that toward the end of January 2010, discussions occurred in relation to a possible sublet of the rental unit to the end of the fixed term, as the tenants wished to move out prior to the end of the fixed term.

At the end of January the tenants were given tenancy application forms for potential occupants to sublet. One individual identified wished to remain beyond the end of the fixed term and was rejected by the landlord due to financial concerns. The tenant stated that at the time they moved out the male individual they had identified to sublet until the end of the term was to contact the landlord. The tenants were willing to pay \$600.00 and the sublet would pay the remaining rent owed. This arrangement was not completed successfully, the unit remained vacant and rent was not paid for March.

The landlord testified that the tenant's potential occupant had been free to stay and pay rent, via the tenants, as he was only to be in the unit for a period from March 1 to 15, 2010; a period too short to require sublet arrangements. The landlord was not contacted by this individual.

An attempt to reach the male individual, who was to sublet, so that he could provide testimony, was unsuccessful. The Telus operator attempted to call the number, which was not in service. The telephone number was confirmed with the operator, who attempted again to reach the individual.

The landlord provided testimony that the tenants failed to provide written Notice ending their tenancy and that, despite discussions of a possible sublet and the provision of application forms to the tenants; they had not received formal Notice from the tenants, ending their tenancy. The landlord is claiming unpaid March, 2010 rent plus loss of revenue for April rent as new occupants were located for May 1, 2010. During the hearing the landlord confirmed that written Notice given before March 1, 2010, would have been sufficient to end the tenancy on March 31, 2010.

The tenant submitted as evidence a copy of an undated note to the landlord, giving Notice ending the tenancy effective March 1, 2010. The tenant gave this to the landlord by taping it to the door of the rent cheque drop box on January 28, 2010, by placing a copy with rent cheque given on January 28, 2010 and by sending it on January 25, 2010, to the landlord's facsimile number listed on the landlord's web site. The landlord stated that they did not receive a copy of the Notice via any of these methods of service.

The landlord has claimed compensation for costs related to showing and advertising the unit. The landlord used their own web site and a popular internet site to advertise throughout March and April. The landlord submitted that the web site is complicated and required a lot of time and effort, that they would receive as many as twenty calls per

day and show the unit 2 to 3 times per day. The landlord also maintained that the market was slow and that this caused a delay in locating new occupants, resulting in the loss of revenue.

On March 2, 2010, the male tenant and landlord met to complete the move-out condition inspection. The landlord submitted a copy of the completed report. The tenant disputed the report and testified that at the time the report was completed the landlord would not provide the tenant with a copy. The tenant had a second copy of the first report in his possession and wanted the landlord to fill that copy in. The landlord countered that he did complete a second copy of the report and provided it to the tenant when the inspection was completed. The tenant stated they first saw the final inspection report when the evidence package for this hearing was given to them.

The condition inspection provided by the landlord indicated the need for some cleaning to a mirror, baseboards, stove, oven, tub, toilet and a smell of urine in the living room. The tenant provided testimony that the male tenant had remained in the rental unit the day they moved and had cleaned. The tenant denied that the rental unit required any cleaning and disputed the contents of the inspection report which the male tenant signed at the end of the inspection.

The landlord's cleaner testified that she spent 2 days in the rental unit cleaning cabinets, the fridge, walls, windows, blinds and the bathrooms. The Application indicated that a cleaner time sheet was included with the evidence; however, this item was not submitted.

The landlord suspected the tenant's dog was urinating in the common area of the building. The tenants lived on the first floor of the building. The tenant provided a copy of a November 18, 2009 notice that was posted by the landlord in the building. This notice indicated that dog feces had been found in the back stairwell and 2nd floor landing. Any tenant who could identify the dog and owner would receive a cash reward; the notice stated that offending tenant would have to pay for carpet cleaning and would be evicted.

The landlord submitted a letter dated June 25, 2010, from an individual who lives in the unit across from that the tenants occupied. The letter stated that in December 2009 this individual witnessed the tenant's dog defecating and urinating in the hallway. The tenants were not approached by the landlord at that time as they wanted additional evidence; however, the landlord believes the tenants were responsible and should pay for steam cleaning of the hallways and stairs, in the sum of \$236.00. An invoice for cleaning completed on April 12, 2010, was submitted as evidence. The landlord had waited for a period of time after the tenants had moved out, in order to determine if the problem continued.

The tenant countered that their dog is house trained and that they had never let the dog urinate or defecate in the hallway. The tenant stated that they never went up the stairs or to the 2nd floor as they lived on the first floor. The tenant had also complained about the

hallways and wondered why, if it had been reported they were responsible the landlord had not evicted them. The tenant also questioned the motivation for the report, as the landlord had offered a monetary award.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation is the reason the party making the application incurred damages or loss;
3. Verification of the amount of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

This fixed-term tenancy was to end effective March 15, 2010, at which point it was to convert to a month to month tenancy. The tenancy ended on March 1, 2010, when the tenants vacated the unit and the landlord obtained possession of the rental unit.

I find, on the balance of probabilities, that the tenants did not give Notice ending their tenancy effective March 1, 2010. The tenants submit that 3 different methods of service were used for Notice given, however; receipt was disputed by the landlord.

The tenants did not provide a copy of a transmittal receipt for the copy of the Notice sent by facsimile and there were no witnesses to the service by posting or inclusion with the rent cheque. Therefore, in the absence of evidence of service and, based upon the disputed testimony, I find that the landlord was not given written Notice ending the tenancy.

I also base this decision on the testimony of the tenant that they were attempting to locate a sub-let. The tenants were at liberty to have someone remain in their unit until the end of the tenancy to have given proper Notice for March 31, 2010. The male individual who the tenant submits was to make arrangements for sub-let with the landlord never materialized, but the tenants could have allowed him to stay in the unit, to pay his share of rent to them, with the tenants then paying the full amount of rent owed for March. That male individual could then have either entered into an agreement with the landlord, or moved out. This did not occur.

Further, the written Notice supplied as evidence indicated the intent to end the tenancy effective March 1, 2010, which was prior to the end of the fixed-term. Section 45 of the Act prohibits a tenant from ending a tenancy prior to the end date of a fixed-term tenancy.

During the hearing the landlord confirmed that the term of the tenancy was to end on March 15, 2010 and he would have accepted written Notice prior to March 1 effective for a March 31, 2010 end of the tenancy, as rent was due on the first day of each month. Section 45 of the act provides, in part:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As the parties agree that March rent was not paid and I have determined that the tenants did not give Notice ending the tenancy for March 31, 2010, I find that the landlord is entitled to compensation for unpaid March, 2010, rent in the sum of \$1,200.00

In relation to the claim for loss of rent revenue for April, I find that the landlord had possession of the rental unit on March 2, 2010, and had sufficient Notice and time in which to identify new tenants. The landlord has not provided any evidence verifying advertising and, based on the number of individuals who called the landlord and viewed the unit, I find, on the balance of probabilities, that the landlord failed to mitigate the loss and I dismiss the claim for loss of April rent revenue.

As I have determined that the landlord has failed to provide verification of costs incurred for advertising costs, I dismiss this portion of the landlord's claim.

The parties dispute the condition inspection reports, the tenant alleged that the report was not completed in their presence; the landlord countered that the tenant was given a completed copy at the time of the inspection, which was signed by the tenant. I have relied upon the testimony of the landlord's cleaner, that some cleaning was required to the rental unit. However, even if I were to accept the items notated as requiring cleaning listed on the move-out condition inspection report submitted by the landlord as evidence, I find that a charge of \$250.00 for 2 days work excessive and inconsistent with the number of items listed on the inspection report. Therefore, in recognition of the need for some cleaning, I find that the landlord is entitled to a nominal sum of \$50.00.

The landlord has provided no evidence that the tenant's dog was responsible for the need to clean the common area carpets. I find that the letter submitted by a neighbour has little weight, as there is no evidence of any investigation of this report by the landlord and no verification that the allegation was founded. Further, I find the tenant's

submission that they had no cause to use the stairs or go to the 2nd floor, compelling, as the tenant's lived in the first floor of the building. Therefore, in the absence of evidence supporting an allegation made by a neighbour who stood to profit from a report to the landlord, I dismiss the claim for common area carpet cleaning.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Loss of April, 2010 rent revenue	1,200.00	0
Cleaning	250.00	50.00
Showing and advertising the unit	250.00	0
Clean carpet in common areas	250.00	0
	3,150.00	1,250.00

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 that the landlord is entitled to retain the tenant's security deposit, in the amount of \$600.00, in partial satisfaction of the monetary claim.

I find, pursuant to section 72(2), that the landlord may retain the pet deposit, in the amount of \$600.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,300.00, which is comprised of \$1,200.00 in unpaid March, 2010, rent, \$50.00 damages 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 and pet deposits in the amount of \$1,200.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$100.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 15, 2010.

Dispute Resolution Officer