

DECISION

Dispute Codes:

Landlord: MND, MNR, MNSD, MNDC and FF
Tenant: MNDC and MNSD

Introduction

These applications were brought by both the landlord and the tenant.

By application of April 13, 2010, the landlord seeks a Monetary Order for unpaid rent, damage or loss under the legislation or rental agreement, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of March 24, 2010, the tenant seeks a Monetary Order for loss or damage under the legislation or rental agreement and return of his security deposit.

Issues to be Decided

These applications require a decision on whether either or both parties are entitled to monetary compensation for the claims presented, taking into account whether their damages are proven, whether they are attributable to the other party, whether the amounts claimed are proven and reasonable, and whether the parties have acted reasonably to minimize their losses.

Background and Evidence

This tenancy began on February 1, 2007, although the tenant had resided in another unit in the building from November 1, 2001. Rent was \$728 per month and the landlord holds a security deposit of \$350 paid on November 1, 2007.

As a matter of note, this tenancy was the subject of a hearing on June 16, 2010. In the result, the landlord was awarded an Order of Possession in support of a Notice to End Tenancy for cause dated May 3, 2010.

According to the landlord, the tenant vacated the rental unit in the early morning hours of June 29, 2008 under the Order of Possession. According to the tenant, he had vacated earlier in the month due to a bedbug infestation.

In his application, the tenant makes claim for \$1,650 for loss of furnishings, among others, as a result of the bedbug infestation and submits photographs of red lesions on his body, a corroborating letter from a girlfriend, and a copy of a letter to the landlord dated May 25, 2008. The letter, written after the Notice to End Tenancy had been served, raised complaints about maintenance in the building, and demanded attention to the bedbug problem said to have existed since the previous October.

The landlord questioned whether there was a bedbug problem and stated that if there was such an infestation, it was brought to the rental unit by the tenant's unauthorized occupants, the most recent of which had brought an unauthorized pet into the unit.

The landlord makes claim for damages to the rental unit, common hallways and his personal vehicle. While damage to the rental unit was part of the initial cause for ending the tenancy, damage to hallways and the landlord's vehicle coincided with his efforts to end the tenancy.

The landlord submitted a receipt for \$587.65 for replacement of a window the tenant says was broken by his unauthorized roommate. The landlord stated he had done the repairs to the rental unit himself and has no receipts. Common property and the landlord's car have not yet been repaired.

The landlord claims \$728 for unpaid rent for June 2008, a claim uncontested by the tenant beyond the justification implied in the bedbug infestation.

Analysis

Resolution of this matter is made more difficult due to the passage of over two years since the tenancy ended and in the divergent accounts of events by the parties. The tenant notes that the landlord did not make application for his damages until after he had received the tenant's Notice of Hearing.

The landlord stated he had initially decided to absorb his losses and noted that the tenant had yet to pay the \$50 filing fee as ordered in the 2008 hearing.

As to the tenant's application, I have not been able to find his evidence reliable.

The tenant stated, for example, that he had no recollection of the eviction proceedings of June 16, 2008 that resulted in the Order of Possession. In fact, the Decision and Reasons from that hearing records that both parties attended the telephone conference call hearing.

The tenant further stated that he had no recollection off an incident in which the landlord requested police attendance when three males were involved in a heated argument with the tenant and threatening violence over the tenant having accepted rent from two different unauthorized occupants. However, the landlord submitted a copy of the police incident report with details of the call.

Finally, the tenant stated that he believed he did not pay the rent for June 2008, but that the security deposit would cover the time he was there. In contradiction, he wrote to the landlord on November 5, 2009 demanding return of the deposit and includes its return in the present application.

In addition, while the tenant makes claim for loss of employment income as a result of moving, the landlord submitted evidence substantiating that the tenant was receiving income assistance at the time.

Given the unreliability of the tenant's evidence, I find that his application is dismissed without leave to reapply.

As to the landlord's claims, while I see the logic in his deduction that the coincidence of eviction proceedings against the tenant and the appearance of graffiti and damage to the common property and his car, I find that it doesn't constitute sufficient proof to justify a monetary award.

In addition, much of the damage remains unrepaired two years after the tenancy ended and the landlord has not provided sufficient evidence for me to establish the monetary value of the damages claimed.

The one exception is the window the tenant agrees was broken by his roommate, and as he was a guest of the tenant, I find that the tenant is responsible for the repair.

I find, also, that the tenant is responsible for the unpaid rent for June of 2008.

As the landlord's application has substantially succeeded, I find that he should recover the filing fee for this proceeding from the tenant, and that he is entitled to retain the security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for June 2008	\$ 728.00
Cost to replace broken window	587.65
Filing fee	100.00
Subtotal	\$1,415.65
Less retained security deposit	- 350.00
Less interest (November 1, 2001 to date)	- 14.20
TOTAL	\$1,051.45

Conclusion

The tenants' application is dismissed without leave to reapply.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,051.45**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

July 19, 2010