

DECISION

Dispute Codes: **Landlord:** MNR, MND, MNSD an FF
Tenants: RPP and FF

Introduction

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

By application of September 16, 2010, the landlord seeks a Monetary Order for unpaid rent, damages and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of August 23, 2010, the tenant seeks an Order for return of personal property and recovery of the filing fee for this proceeding.

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent, damages and filing fee and authorization to retain the security deposit.

The tenant's application requires a decision on whether she is entitled to an Order for return of personal property and recovery of her filing fee.

Background and Evidence

This tenancy began on May 1, 2009 under a fixed term rental agreement set to end on April 30, 2010. The rental agreement option that states that the tenancy ends on that date was selected and the option to continue on a month to month basis was not.

Rent was \$1,350 per month and the landlord holds a security deposit of \$675 paid on April 9, 2010. The tenant had rented the unit for her daughter who was attending school while the tenant herself returned to China.

During the hearing, the landlord gave evidence that he served a 10-day Notice to End Tenancy for unpaid rent by posting it on the tenant's door on February 4, 2010. He stated that he had not had contact with the tenant for some time before that, did not hear from her after and he was unable to reach her. Subsequently, the March and April rents were not paid.

The landlord stated he had not been able to make his application sooner, because he did not have a forwarding address for the tenant until receiving a copy of her application.

The property was sold and the May 1, 2010 possession date would not have interfered with the tenancy.

The landlord stated that, in spite of not paying the rent, the tenant had not provided him with a notice to end tenancy or a forwarding address and the tenant did not return the keys or key fob.

Having need to prepare the rental unit for possession by the purchaser, in late April 2010 the landlord arranged for cleaning, replacement of the keys and to have some remaining debris and property removed at a cost of \$350 for which he provided a receipt.

The landlord also claims \$103.95 for carpet cleaning and replacement of the keys and fob at \$170, a standard fee set by the strata corporation for missing keys.

The landlord gave evidence that, on assessing the materials left behind, he believed they were clearly of a value at less than \$500 and he disposed of them in accordance with *Regulation 25(2)* under the *Act*.

The tenant, with the assistance of a translator/advocate concurred that rent had not been paid for February, March and April but gave evidence that the daughter had been concerned that the rental unit would not be available to her after it was shown by a realtor.

The tenant submitted a list and claims return of goods said to have been worth approximately \$10,000 when new. The list included furnishings, two computers, clothing, bed and various other belongings, including important personal papers.

The tenant submitted photographs of the rental unit, but much of the claimed property is not apparent.

Analysis

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Section 44(b) of the *Act* states that, unless there is provision in the rental agreement that the tenancy can continue on a month to month basis, the tenancy ends on the date set in the agreement.

Therefore, I must find that the tenant owes the landlord the unpaid rent for the final three months of the tenancy to April 30, 2010.

I further find that the landlord is entitled to recover the cost of key and fob replacement and costs of clearing and cleaning the rental unit.

As to the tenant's claim for return of personal property, Regulation 24(b)(i) under the *Act* provides that a landlord may consider a rental unit to be abandoned that "for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent..."

I find, therefore, after three months of unpaid rent and no communication from the tenant, including no response to the Notice to End Tenancy for unpaid rent, the landlord had lawful reason to consider the rental unit abandoned.

Moreover, in the absence of compelling proof to the contrary, I accept the landlord's assessment that the materials left behind had a value of less than \$500 and that he was entitled to dispose of them under *Regulation 25(2)*. Even if, for example, the bed cost \$3000 to purchase, once used, the second hand value is only a small fraction of the original cost.

In addition, the tenant concurred that no rent was paid for three months, and did not contest no notice was give, no forwarding address was provided, no keys were returned and I find that the tenant breached the fixed term agreement. In this, I must find cause to question the tenant's credibility.

Therefore, the tenant's application is dismissed without leave to reapply.

As to the landlord's application, I find that, including recovery of the filing fee and authorization to retain the security deposit in set off, the tenant owes to the landlord an amount calculated as follows:

Rent for February 2010	\$1,350.00
Rent for March 2010	1,350.00
Rent for April 2010	1,350.00
General cleaning and material removal	350.00
Carpet cleaning	103.95
Replacement of keys and fob	170.00
Filing fee	50.00
Sub total	\$4,723.95
Less retained security deposit (No interest due)	- 675.00
TOTAL	\$4,048.95

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 \$4,048.95, enforceable through the Provincial Court of British Columbia, for service on the tenant.

October 7, 2010