

Decision

Dispute Codes: MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. The landlord stated that the aspect of his original application concerning an order of possession was made in error, and is therefore withdrawn. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from November 7, 2009 to October 31, 2010. Rent in the amount of \$1,300.00 was payable in advance on the first day of each month. A security deposit of \$650.00 was collected at the outset of tenancy. The parties agree there was no move-in condition inspection report completed.

After the end of the fixed term, tenancy was to continue on a month-to-month basis. However, the tenancy ended effective October 31, 2010 pursuant to the landlord's issuance of a 2 month notice to end tenancy for landlord's use of property. That matter is the subject of the tenant's application for dispute resolution, in relation to which a hearing is scheduled to take place on April 6, 2011. Completion of a move-out condition inspection report was not undertaken by the parties at the conclusion of tenancy.

Compensation sought by the landlord is comprised of \$200.00 for cleaning and minor repairs, in addition to recovery of the \$50.00 filing fee. The landlord acknowledged that

apart from the filing fee, the costs claimed have not yet been incurred and, rather, they represent an “estimate.”

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a limited resolution. Specifically, it was agreed as follows:

- that the landlord will retain **\$40.00** from the tenant's security deposit, which is comprised of \$20.00 for cleaning, and \$20.00 for key replacement.

The particular attention of the parties is drawn to the following sections of the Act:

Section 23: Condition inspection: start of tenancy or new pet

Section 24: Consequences for tenant and landlord if report requirements not met

Section 35: Condition inspection: end of tenancy

Section 36: Consequences for tenant and landlord if report requirements not met.

Following from the above legislative provisions, in the absence of either a move-in or move-out condition inspection report, I find that the landlord's entitlement to a claim against the tenant's security deposit is extinguished. Further to this, as previously noted, the landlord's costs represent “estimates” and are not costs that have been incurred.

By way of their settlement discussions during the hearing, the landlord has achieved limited success in this application. Accordingly, I find that he is entitled to recover half the filing fee in the amount of **\$25.00**.

As for the monetary order, I find that the landlord has established a total claim of **\$65.00** (\$40.00 + \$25.00). I order that the landlord retain this amount from the tenant's security deposit, and I order the landlord to FORTHWITH return the balance to the tenant in the amount of **\$585.00** (\$650.00 - \$65.00). Arising from this I hereby grant the tenant a monetary order under section 67 of the Act for **\$585.00**.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$585.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 7, 2010

Dispute Resolution Officer