

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on November 2, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on October 12, 2010 in person. The landlord also sought a Monetary Order for the unpaid rent/loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail to both his resident and corporate address on November 3, 2010, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

At the commencement of the hearing, the landlord stated that the tenant had vacated the rental unit on October 31, 2010. Therefore, there is no need for the Order of Possession. In addition, in giving notice that he was breaking the fixed term lease at the end of October 2010, the tenant paid half of the rent for October and instructed the landlord to retain the security deposit for the balance of the month. Therefore, the disposition of the security deposit is no longer at issue.

Issues to be Decided

This application now requires a decision on whether the landlord is entitled to a Monetary Order for loss of rent, cleaning, repairs and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on August 20, 2010 under a fixed term rental agreement set to end on August 31, 2011. Rent was \$3,900 per month and the landlord held and retained with the tenant's consent a security deposit of \$1,950.

During the hearing, the landlord gave evidence that he had entered into the rental agreement with a resident of Anguilla, British West Indies jointly under his corporate and personal name to house the wife and son of the tenant.

While other reason was given by the tenant for ending the tenancy, the landlord stated that the wife and son had, in fact, moved across the hall in the strata titled rental building.

The landlord stated that, on receiving the tenant's notice on September 30, 2010, he had immediately begun advertising the rental unit on the Kijji and Castanet websites and on his own property management corporate web site. However, he stated that the local market is slow in the fall and he had been unable to find new tenants to the time of the hearing on December 16, 2010.

The landlord stated that the rental unit had not been cleaned, carpets had not been cleaned, and the unit required minor paint touch up to make it ready for new tenants.

Analysis

The landlord claims and I find as follows:

Loss of rent for November 2010 - \$3,900. Section 45(2)(b) of the *Act* provides that a tenant may not give notice to end a fixed term tenancy agreement on a date that is earlier than the end of tenancy date set by the rental agreement, in this case August 31, 2011. Section 7 of the *Act* provides that, if a party to a rental agreement suffers a loss due to the non-compliance of the other, the non-compliant party must compensate for that loss. The party suffering the loss is obliged to do whatever is reasonable to minimize that loss, an obligation I find the landlord has met by the noted advertising efforts. Therefore, I find that this claim is allowed.

Loss of rent for December 2010 - \$3,900. For reasons cited in the preceding claim for November, this claim is allowed in full.

General cleaning - \$265. The landlord submitted a copy of an invoice from a professional cleaning company for 10 hours work @ \$26.50 per hour for a total claim of \$265. This claim is allowed in full.

Carpet cleaning - \$250. The landlord noted that the tenants had two dogs, contrary to the rental agreement and submitted this claim which I find is allowed.

Paint touch up - \$100. The landlord submitted an invoice for \$125 for paint touch up required at the end of the tenancy, but claims only \$100 as he stated that there was one pre-existing area that was done as well. This claim is allowed.

Filing fee - \$100. As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant.

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

Loss of rent for November 2010	\$3,900.00
Loss of rent for December 2010	3,900.00
General cleaning	265.00
Carpet cleaning	250.00
Paint touch up	100.00
Filing fee	100.00
TOTAL	\$8,515.00

Conclusion

In addition to authorization to retain the security deposit in set off against rent for October 2010, the landlords' copy of this decision is also accompanied by a Monetary Order for **\$8,515.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for such further loss of rent as may be ascertained when he is able to begin a new tenancy.

December 16, 2010