

DECISION

Dispute Codes MNR, MNSD, SS, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, to keep all or part of the security deposit, to serve documents or evidence in a different way and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This one year, fixed term tenancy started March 8, 2010 with rent of \$1100.00 and the tenants paid a security deposit of \$550.00.

The landlord testified that the tenants vacated the rental unit in mid October of 2010 which was prior to the end date of the fixed term tenancy agreement and that the tenants did not pay the October 2010 rent of \$1100.00.

The landlord stated that neither a move-in or move-out inspection was completed in regards to this tenancy however the landlord as part of this application filed a claim for damage done to the floor and submitted receipts for the repair. The landlord noted in the details of dispute that the tenant's did not honour an agreement to pay \$300.00 for tree removal however the landlord stated that this was not part of his claim.

The tenant testified that the rent for October 2010 is outstanding and that she had no issue sending the landlord the unpaid rent. The tenant did ask the landlord in this hearing why the other tenant on the tenancy agreement was not named in the landlord's application.

Law

Residential Tenancy Act **Section 23 Condition inspection: start of tenancy or new pet**

(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
 - (a) *the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
 - (b) *a previous inspection was not completed under subsection (1).*
- (3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
- (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (6) *The landlord must make the inspection and complete and sign the report without the tenant if*
 - (a) *the landlord has complied with subsection (3), and*
 - (b) *the tenant does not participate on either occasion.*

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** in part speaks to

- (5) *The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
- (6) *If a landlord does not comply with subsection (1), the landlord*
 - (a) *may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) *must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Residential Tenancy Act **Section 72 Director's orders: fees and monetary orders**

- (1) *The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] by one party to a dispute resolution proceeding to another party or to the director.*
- (2) *If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*
 - (a) *in the case of payment from a landlord to a tenant, from any rent due to the landlord, and*
 - (b) *in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent. As the landlord has not complied with Section 23 of the Act the landlord has per Section 38 of the Act, extinguished their right to claim against the security deposit for damages.

As the landlord has had some success in their application the landlord is entitled to recover \$25.00 of the filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$1100.00 in unpaid rent. The landlord is also entitled to recovery of \$25.00 of the filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$550.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$575.00** ($\$1100.00 + \$25.00 = \$1125.00 - \$550.00 = \575.00)

A monetary order in the amount of **\$575.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: February 25, 2011

Residential Tenancy Branch