

DECISION

Dispute Codes: MND, MNSD and FF

Introduction

By application received on February 10, 2011, the landlord sought a Monetary Order for 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.

As a matter of note, this tenancy was the subject of a Hearing on January 28, 2011 on the tenant's application for return of the security deposit in double under section 38(6) of the *Act*. However, as the parties gave contradictory testimony on whether the tenant had ever provided a forwarding address and as the tenant had no proof of having ever provided it to the landlord, his application was dismissed.

However, the Dispute Resolution Officer made a finding that the landlord then had the tenant's forwarding address by way of the tenant's application and ordered him to return the deposit or make the present application to claim upon it. The tenant was granted leave to reapply if the landlord did not do so.

At the commencement of the hearing, the landlord advised that he sought only authorization to retain the security deposit and recovery of the filing fees.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a monetary compensation by way of the security deposit or the claims submitted taking into account whether damages are proven, are attributable to the tenant, amounts are proven and reasonable, and whether the landlord has acted reasonably to minimize any losses.

Background, Evidence and Analysis

This tenancy began on February 1, 2009 and ended on November 1, 2009. Rent was \$1,450 per month and the landlord holds a security deposit of \$725.

During the hearing, the landlord submitted 21 photographs showing piles of refuse, holes in the walls, missing light fixtures, broken doors, damaged drawers, the need for cleaning throughout, etc.

The landlord submitted a copy of a receipt for \$400 from the tenant who moved in after the respondent with the notation “for repairs labour damages without materials.” The landlord stated that he had granted the new tenant a further \$300 in rent relief plus materials for the repairs to the rental unit.

The respondent concurred that the photographs did represent the rental unit in the condition in which he had left it but he stated that the damages had been in existence when he moved in. He stated that he had made three trips to the dump at the beginning of the tenancy.

The tenant stated that there had been no move-in condition inspection report at the start of the tenancy and the landlord stated that the tenant did not attend an inspection at the end of the tenancy.

Analysis

Section 67 of the Act authorizes that, “if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.”

On the basis of the photographic evidence and the receipt from the following tenant, I find, I find that the landlord’s losses due the damage done by the respondent tenant are proven and to be at least \$400.

As I have no documentary or corroborating evidence to quantify the greater losses claimed by the landlord, I must find that he has not met the burden of proof required to substantiate them.

As the application has partially succeeded, I find that the landlord is entitled to recover one half of the filing fee from the tenant.

Therefore, as permitted under section 72(2)(b) of the Act, I hereby authorize and order that the landlord may retain \$425 from the tenant’s security deposit and must return \$300.

Conclusion

The landlord is authorized to retain \$425.00 from the tenant's security deposit and must return \$300. In the interests of bringing this matter to conclusion, the tenant's copy of this decision is accompanied by a Monetary Order for \$300.00, enforceable through the Provincial Court of British Columbia, for service on the landlord.

June 1, 2011