

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, provided affirmed testimony, and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 8, 2011, the tenant did not attend. The landlord testified that the tenant was served by registered mail on March 8, 2011 and provided a tracking number from Canada Post. The *Residential Tenancy Act* provides for service upon a tenant by registered mail, and I find that the tenant has been properly served for this hearing.

The landlord also provided evidence that was not received by the Residential Tenancy Branch within the time set out in the Rules of Procedure. I find that, in the absence of the tenant, the tenant would be prejudiced by the inclusion of that evidence, and it is therefore not considered in this Decision. All other evidence and the testimony provided by the landlord have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to an order permitting the landlord to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 1, 2008 and ended on February 15, 2011. Rent in the amount of \$500.00 per month was

payable at the beginning of the tenancy on the 1st day of each month. The tenant moved his family into the unit in mid-2009 and the parties had agreed that the rent would increase to \$550.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 and no pet damage deposit was collected.

The landlord further testified that the tenant left the rental unit without notice on February 15, 2011. The tenant spoke to the landlord on February 15, 2011 stating that the tenant was moving that day, told the landlord to keep the security deposit, and moved on that date. The landlord claims 2 month's rent, for the months of February and March 2011.

The landlord further testified that the tenant left the unit without cleaning, and also left garbage behind in the rental unit that the landlord had to haul to the local landfill. The landlord claims \$100.00 for cleaning the rental unit, being \$25.00 per hour for 4 hours, although no move-in or move-out condition inspection reports were completed. The landlord also claims \$20.00 for a lock broken by the tenant, although no receipt has been provided. The landlord testified that one was already on hand, so it was used rather than purchasing a new lock.

The landlord also testified that the tenant did not advise the landlord that a pipe was leaking from the ceiling of the rental unit onto the carpet. Because it was not reported to the landlord, the landlord claims \$167.20 for the plumbing bill.

Analysis

The *Residential Tenancy Act* states that a tenant must provide at least one month's notice in writing to a landlord to end a tenancy. I accept the evidence of the landlord that the tenant gave no notice and vacated the rental unit without paying rent for the month that the tenant vacated. Therefore, I find that the landlord has established a claim for rent for the month of February, 2011 in the amount of \$550.00. I further find that if the tenant had provided notice to vacate the rental unit on February 15, 2011, the tenant would still be obligated to pay rent for the subsequent month, and therefore, the landlord has established a claim for rent for the month of March, 2011 in the amount of \$550.00.

In a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss;
4. What efforts the claiming party made to mitigate the loss or damage suffered.

In this case, the landlord provided no evidence to satisfy any of the elements. Without the benefit of move-in and move-out condition inspection reports, I cannot be satisfied that the tenant left the unit in any different condition when the tenant moved out than the condition of the rental unit when the tenant moved in. Therefore, I find that the landlord has failed to establish any damages. Further, the *Act* states that if a landlord fails to complete the inspection reports, the landlord's right to claim against the security deposit for damages is extinguished. However, I further find that the landlord's right to claim against the security deposit for unpaid rent is not extinguished, and the landlord is entitled to keep the security deposit.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$250.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$900.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

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: June 30, 2011.

Residential Tenancy Branch