

DECISION

Dispute Codes: MNR, MND, MNSD and FF

Introduction

This application was brought by the landlord on May 20, 2011 seeking a Monetary Order for unpaid rent after the tenant left the rental unit having given late verbal notice. The landlord also sought compensation for cleaning costs, 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, the landlord had not checked off the box indicating a claim for damages on the application. However, as photographic evidence and the sum claimed made is obvious that the landlord was claiming for damages, I exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application accordingly.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent/loss of rent, cleaning and damage to the rental unit taking into account whether damages are proven, attributable to the tenant, reasonable as to remediation costs, and whether the landlord has taken reasonable steps to minimize the losses claimed. Damage awards are also considered against reasonable wear and tear and depreciation and the burden of proof lies with the claimant.

Background and Evidence and Analysis

This tenancy began on October 1, 2009 under a 12-month fixed term rental agreement set to end on September 30, 2010 and defaulted to a month to month tenancy when it

continued. Rent was \$874 per month and the landlord holds a security deposit of \$434.50 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the tenant had advised by telephone on April 7, 2011 that he would be leaving the tenancy on April 30, 2011. The landlord advised the tenant that the notice was too late to end the tenancy on April 30, 2011 and requested that the tenant submit written notice to end the tenancy on May 31, 2011. Written notice was never submitted.

The landlord stated that she had advised the tenant that he would be responsible for May rent and that he had acknowledged that responsibility and stated it would leave him more time for cleaning.

The tenant submitted that, because the fixed term agreement had ended the tenancy on September 30, 2011, he believe that he was not required to give further notice. The tenant also outlined deficiencies in the rental unit including water intrusion that had resulted in heavy mould and concern over the electrical service.

The landlord stated that she had never received written notice of the tenant's concerns.

The landlord submitted over 40 photographs of the rental unit in support of claims against the security deposit for carpet cleaning, general cleaning and replacement of a passage door that had two holes in it.

The landlord stated that she had not submitted paid receipts or an itemized accounting of labour and materials required to do the work as it had been done by staff, and the costs substantially exceeded the security deposit which was all she was requesting for cleaning and damages.

Analysis

In view of the lack of receipts or an itemized accounting of cleaning and repair claims, where I have been persuaded by photographic and oral evidence of the need for the work claimed, I have given the benefit of doubt to the tenant and awarded nominal damages in amounts below what I believe to be the landlord's actual costs.

Unpaid rent/loss of rent - \$874. Section 45(1) of the *Act* provides that a tenant's notice to end a tenancy must be given at least one full month in advance and may be given on any date before the next date on which rent payable. In other words, to take effect on April 30, 2011, the tenant's notice would need to have been served on the landlord no later than March 31, 2011. Section 45(4) requires that such notice must comply with section 52 of the *Act* which, in turn, requires that the notice must be in writing and signed among other requirements.

Section 45(3) of the *Act* creates an exception to this limit with the provision that, "If a landlord has failed to comply with a material term of the tenancy agreement ...and has not corrected the situation within a reasonable period after the tenant gives **written notice** of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In the absence of "written notice" to the landlord, I must find that the tenant cannot rely on section 45(3) with respect to the claimed deficiencies in the rental unit. Therefore, I find that the tenant is responsible for the landlord the rent for May of 2011 as claimed.

Carpet cleaning - \$135. While the landlord has not submitted a receipt or an accounting of time required for this service, photographic evidence clearly shows that the carpets were neither vacuumed nor shampooed at the end of the tenancy, a standard requirement. As I find that the tenant did not clean the carpets but have no documentary evidence to support the amount claimed, I will allow an amount reduced to the lower end of the scale for such services and award \$100 on this claim.

Door Replacement - \$100. I am satisfied on the basis of photographic evidence that the door in question required replacement due to damage done while the tenant was responsible for the rental unit. Taking into account the value of a replacement door, the cost of acquiring it and the labor required to match hardware placement, I find this claim to be reasonable and it is allowed.

General cleaning - \$200. On the basis of photographic evidence clearly demonstrating the need for substantial cleaning, but taking into account that the landlord has acknowledged some water intrusion into the rental unit which may have contributed to existing mold, I am reducing the award on this claim to \$100.

Filing fee - \$50. Having found merit in the application, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant.

Security deposit – (\$434.50). As authorized under section 72 of the *Act*, I hereby order that the landlord shall retain the security deposit in set off against the balance owed.

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

Unpaid rent/loss of rent for May 2011	\$ 874.00
Carpet cleaning	100.00
Door replacement	100.00
General cleaning	100.00
Filing fee	<u>50.00</u>
Sub total	\$1,224.00
Less retained security deposit	- 434.50
TOTAL	\$ 789.50

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$789.50**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

August 31, 2011