

DECISION

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

Introduction

This application was brought by the landlord on November 23, 2010 seeking an Order of Possession and a Monetary Order for unpaid rent pursuant to a 10-day Notice to End Tenancy for unpaid rent dated November 2, 2010. It was originally treated as a Direct Request proceeding on December 6, 2010, but was adjourned to the present participatory hearing due to a deficiency in the dating of the Notice.

In the interim, the landlord served another Notice to End Tenancy dated November 17, 2010 and the tenants have moved out. The landlord amended her application on December 13, 2010 to include a request for loss of rent for December, the cost of carpet cleaning, recovery of the filing fee and authorization to retain the security and pet damage deposits in set off against the balance owed.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to monetary compensation as requested and authorization to retain the deposits in set off.

Background, Evidence and Analysis

This tenancy began on September 1, 2010 under a fixed term rental agreement ending on August 31, 2011. Rent was \$1,045 per month plus one-third of the utilities. The landlord holds a security deposit of \$522.50 paid on August 13, 2010 and a pet damage deposit of \$200 paid on September 10, 2010.

During the hearing, the landlord submitted her claims on which I find as follows:

Rent/loss of rent for November 2010 - \$1,045. The landlord gave uncontested evidence that the November rent had not been paid. The tenant expressed the view that he should only have to pay for the portion of the month during which he occupied the rental unit. The tenant stated that the unit was vacated on November 24, 2010 and the landlord stated that it was November 27, 2010. In either case, the loss of rent for the remainder of the month was a result of the tenants' breach by not paying the rent. Therefore, the tenants are responsible for the full rent for November and this claim is allowed in full.

Loss of rent for December 2010 - \$1,045. During the hearing, the tenant gave evidence that the upstairs tenants had moved into the subject rental unit shortly after he moved out. The landlord concurred that they had begun to move belongings into the suite early in December, but that she had lost the rent for upstairs in allowing the move. I must find that the subject rental unit was not available for new tenants in December and therefore, the landlord cannot claim loss of rent for December. This claim is dismissed.

Carpet cleaning – 56.00. The landlord submitted a paid invoice for carpet cleaning for \$56 and I find this claim should be allowed.

Filing fee - \$50. As this application was necessitated by the tenants' failure to pay rent and I find that the landlord is entitled to recover the filing fee from the tenants.

Security and Pet Damage Deposits - \$722.50. Section 72 of the *Act* provides that if the Director's designate finds an amount owing by a tenant to a landlord, the designate may order that amount taken from security or pet damage deposits. In this matter, I hereby authorize and order that the landlord may retain the security deposit of \$522.50 and the pet damage deposit of \$200 in set off against the balance owed to her.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

November rent	\$1,045.00
Carpet cleaning	56.00
Filing fee	<u>50.00</u>
Sub total	\$1,151.00
Less retained security and pet damage deposits (No interest due)	<u>- 722.50</u>
TOTAL	\$ 428.50

Conclusion

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$428.50 for service on the tenants.

December 23, 2010