

## **DECISION**

### **Dispute Codes:**

MND, MNR, MNSD; FF

### **Introduction**

This Hearing was scheduled to hear the Landlord's application for a Monetary Order for unpaid rent, compensation for damage to the property, and damage or loss under the Act, regulation or tenancy agreement; to keep all of the security deposit; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided the Landlord prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenants?

### **Background and Evidence**

The Landlord gave the following submissions and evidence:

The Landlord served the Tenants with the Notice of Hearing documents by couriering the documents to the Tenants' new address on June 5, 2009. The Landlord also provided a copy of the Notice of Hearing documents to the Manager at the female Tenants' place of business on June 5, 2009.

The tenancy started on December 20, 2008, and ended on May 31, 2009, when the Tenants moved out of the rental unit without providing notice. The rental unit is a fully furnished single family dwelling.

There were two successive tenancy agreements with respect to this tenancy. The Landlord provided original copies of both agreements.

The first tenancy agreement, signed by the parties on December 20, 2008, was for a term of 3 months, with an option to extend the tenancy on a month-to-month basis

thereafter. Monthly rent was \$7,875.00 per month. When the tenancy started, the Tenants' insurance company paid the Landlord three months' rent in advance in the amount of \$23,625.00. A security deposit in the amount of \$2,500.00 was paid on December 20, 2008. The tenancy agreement included weekly cleaning services, lawn and garden maintenance, pool maintenance and utilities. An inventory of the furniture and other household items was attached to the tenancy agreement, and provided in evidence. The Landlord also provided photographs depicting the furniture, original artwork and general condition of the rental unit when the tenancy began. No formal Condition Inspection Report was done at move-in.

The subsequent tenancy agreement was signed by the Landlord and the male Tenant on February 26, 2009. It required the Tenants to pay monthly rent in advance (i.e. May rent was due on April 1, 2009). The Tenants' insurance company paid the Tenants the monthly rent, which was then paid by the Tenants to the Landlord. The tenancy agreement provided for late fees in the amount of \$200.00 per day. In addition, there was a \$300.00 NSF fee for the first occurrence; \$400.00 for the second occurrence; etc. The tenancy agreement required the Tenants to provide the Landlord with two months written notice of their intent to end the tenancy. Additional clauses in this subsequent tenancy agreement included:

- Should the Tenants decide to employ their own cleaning lady, the Landlord would pay the Tenants' cleaning lady the amount of \$320.00 per month;
- Costs of repairs and cleaning not completed on move-out, together with penalties, etc. would be automatically be deducted from the security deposit;
- The house was stocked with 36 bottles of red wine. If the Tenants consumed any of the wine, they would pay the Landlord \$25.00 for each bottle consumed.

The Tenants did not provide any notice and vacated the rental unit on May 31, 2009. The Landlord applied for rent for the months of June and July, 2009, in accordance with the provisions of the tenancy agreement, for a total of \$15,750.00. The Tenants did not clean the rental unit prior to leaving. The Landlord paid 3 cleaning staff a total of \$2,325.00 to clean the rental unit (3 cleaning staff x 27 hours @ \$25.00 per hour). The Tenants consumed 30 bottles of wine and did not reimburse the Landlord and owe the

Landlord \$750.00. The Landlord had to remove 3 pick-up truck loads of garbage and refuse, which cost him \$225.00. The Tenants were one day late paying rent and owe the Landlord requested \$200.00 per the tenancy agreement. A multiple-head screwdriver was missing from the rental unit, and the Landlord requested \$18.00 to replace it. Furthermore, the Tenants caused considerable damage to the rental unit. A list of the damages was provided by the Landlord, together with photographs depicting the damages. The total amount for damages claimed by the Landlord is \$4,852.00. The Landlord did an Inspection Report at the end of the tenancy, but the Tenants did not sign it.

The rental unit has not been re-rented. The Landlord has occasionally been staying in the rental unit since the Tenants left.

The Landlord's Witness gave the following testimony:

The Witness is one of the cleaning staff who cleaned the rental unit after the Tenants moved out. She was also at the rental unit immediately before the Tenants moved in. The rental unit was in very good repair and very clean when the Tenants moved in and after they moved out, the rental unit was a mess. It appeared to the Witness that the Tenants had purposefully made the mess and damaged the rental unit. There were dirty diapers and broken or discarded toys all over the house. The plumbing was plugged up, cushions were thrown on the floor, a brand new leather suite was stained and a brown couch was ripped.

The Tenant gave the following submissions:

The Tenants gave the Landlords verbal notice at the end of April that they would be moving out at the end of May. The Landlord knew they were moving at the end of May because he was showing the house to prospective tenants. The Tenants provided the Landlord with rent for the months of April and May and do not believe they owe the Landlord rent for the months of June and July.

The Tenants were cleaning the rental unit on the 30<sup>th</sup> of May, but the Landlord's Witness came a day early, before they were finished.

The Landlord did not provide the services he promised. The pool was not serviced and did not have heat, so the Tenants could not use it. The yard was not professionally maintained. The Tenants drank some of the Landlord's wine, but they were told by the Landlord that they could as long as they left the bottles, as he made his own wine. The Landlord turned off the gas to the rental unit in May. The cleaners provided by the Landlord only came once. They refused to clean the bathrooms and windows, so the Tenants' nanny took over the cleaning duties. The Landlord paid the nanny, but some cheques bounced.

The Tenants received the list of inventory and the photographs of the rental unit before they moved in, but did not receive a copy of the photographs taken after they moved out. The Landlord did not invite the Tenants to do a move-out inspection.

The Tenants admit they damaged a door frame; a living room wall unit (one of two small doors); a window screen in the bedroom; and a sofa in the living room. The Tenants did not remove a multiple-head screw driver from the rental unit.

### **Analysis**

The Tenant, in his submissions, provided testimony to suggest that the Tenants feel they may have a claim against the Landlord. However, the Tenants have not filed an application for Dispute Resolution and this Hearing was set to consider the Landlord's application only.

By using a courier and providing a copy to the female Tenant's Manager, the Landlord did not serve the Tenants with the Notice of Hearing package in accordance with the provisions of Section 89 of the Act. However, the male Tenant was present at the Hearing and I am satisfied that the Tenants received the Notice of Hearing documents.

It is important to note that the subject tenancy agreements included many clauses which are unenforceable. Section 5 of the Act states that landlords and tenants may not avoid or contract out the Act or regulations and that any attempt to do so is of no effect.

Some of the unenforceable provisions include:

- The requirement that rent be paid a month in advance;
- The security deposit could be unilaterally withheld by the Landlord;
- The Tenants must give the Landlord 2 months written notice of their intent to end the month-to-month tenancy;
- Late fees in excess of the allowable \$25.00 per month when the rent is paid late;
- NSF fees in excess of service fees charged by a financial institution or allowed under the regulation.

The Landlord did not comply with Section 38 of the Act, with respect to performing Condition Inspection Reports. The Landlord did not provide any documentary evidence as to the cost of cleaning and repairs to the rental unit and therefore has not proven those costs. However, as the Tenant agreed that the Tenants did cause some of the damages claimed, I allow a nominal amount for damages in the amount of \$200.00.

I accept that the Tenants did provide the Landlord with verbal notice that they were moving out on May 31, 2009, but did not provide one month's written notice as is required by Sections 45 and 52 the Act. Therefore, I find that the Landlord is entitled to loss of rent for the month of June, 2009, in the amount of \$7,875.00.

The Landlord agreed that he had provided the Tenants with free wine when they moved in, and that he had made the wine himself. I dismiss the Landlord's claim for \$750.00 to replace 30 bottles of wine.

I dismiss the remainder of the Landlord's application for a monetary order for damages, as they are either unproven due to insufficient evidence or unenforceable under the Act.

The Landlord has been partially successful in his claim and is entitled to recover \$50.00 of the cost of filing his application.

The Landlord has established a monetary award in the amount of \$8,125.00. Pursuant to Section 72(2)(1) of the Act, the Landlord may deduct the \$2,500.00 security deposit, together with accrued interest in the amount of \$1.23, from his monetary award. I am

providing the Landlord with a Monetary Order in the amount of \$5,623.77, being the remainder due to the Landlord after setting off the security deposit and interest.

### **Conclusion**

I hereby grant the Landlord a Monetary Order in the amount of \$5,623.77 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 23, 2009