

DECISION

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

Introduction

These applications were brought by both the landlord and the tenants.

By application of September 29, 2009, the landlords seek a Monetary Order for unpaid utilities, carpet cleaning, damage to the rental unit, damage and losses, and recovery of the filing fee for this proceeding and authorization to retain a portion of the security deposit in set off.

By application of October 6, 2009, tenant seeks return of her security deposit and recovery of the filing fee for this proceeding. As the landlords application includes a request to retain the security deposit and it was made within 15 days of the end of the tenancy, the tenant's application is moot as disposition of the deposit can be determined on the landlords' application.

Issues to be Decided

This matter requires a decision on whether the landlords are entitled to a Monetary Order, if so in what amount, and whether they are entitled to retain the security deposit in set off against the balance owed.

Background, Evidence and Analysis

This tenancy began on October 1, 2008 under a fixed term rental agreement set to end on September 30, 2009, although the landlords accepted the earlier end of tenancy on September 15, 2009. Rent was \$1,850 per month and the landlords hold a security deposit of \$925 paid on October 1, 2008.

During the hearing, the landlords submitted numerous claims for damages and damage and loss under the legislation or rental agreement. In considering such claims, I must take into account whether the damage or loss actually exists, whether it is a result of the action or negligent inaction of the tenant, whether the amount claimed is fair and reasonable and whether the landlords have met their obligation under section 7(2) of the *Act* to do whatever is reasonable to minimize their losses. .

The landlords claim and I find as follows:

Replacement of Front Door - \$467.68. Photographic evidence submitted by the landlords shows that the front door was damaged in such a way that there was a split in the wood core and the metal facing has separated from the core. In the photo, the door hardware was missing. The tenant expressed the view that the door had frozen and expanded in the winter resulting in the damage. She stated she tried unsuccessfully to open it and had advised the property manager of the problem. The property manager gave evidence that she had only been told about the hardware. The landlord stated freezing could not have been the problem as the door opens and closes easily in the current cold weather and always did and it is well protected from moisture by the overhang. The landlord said the door cannot be repaired because it is steel bonded to foam insulation, a seal which once broken cannot be restored. The tenant concurred that the door had functioned well until a month and one-half into her tenancy. Therefore, I must conclude that some event led to the damage of the door while it was in the tenant's care and she is responsible for its replacement. This claim, supported by written estimates, is allowed in full.

Replace panel on stainless steel stove - \$522.51. The landlords make claim that there are scratches on the stainless steel stove and seek reimbursement for replacement of the marked parts. The property manager gave evidence that there appeared to be paint on the stove and she assisted the tenant in removing it with a sponge with an abrasive backing. Given the doubt as to whether the tenant is solely responsible for the scratches, and given the fact that the stove remains fully functional, I do not believe the tenant should be held responsible for replacement of the scratched parts. Therefore, I award \$100 for the diminished aesthetic value of the appliance.

Replace refrigerator door - \$412.36. The landlords claim this amount due to a scratch mark of approximately one-foot in length on the stainless steel refrigerator door. Again, I do not find the degree of damage warrants replacement of the door and further observe that in renting the property to a family with four children, the landlords could reasonably have anticipated some degree of wear and tear on the rental unit and factored such into the substantial rental rate. Again, I award \$100 for the diminished aesthetic value of the appliance.

Clean Dryer - \$45. The landlords make claim that the clothes dryer had a blue residue and rubber material on the drum that was not present at the beginning of the tenancy and submit an invoice for \$45. I find that this claim is allowed in full. As to adjustment of a bi-fold closet door on the same invoice, I find that to be a function of normal maintenance and make no award.

Replace utility room floor – \$1052.35. The landlords claim this amount for the replacement of the utility room vinyl flooring which, as an “x” shaped scratches/slits in it. The tenant is of the view that the scratch was probably caused when some renovation work was being done in the room and has simply become more visible over time. She

stated she hardly used the room and never in such a way that would have caused the marks. I have substantial doubt that the tenant caused this damage and decline to make an award on this claim and further observe that it is a storage/utility room.

Carpet cleaning – \$157.50. The tenant acknowledges that she contracted this service and authorized the landlord to retain the amount from the security deposit.

Unpaid water bill - \$111.00 The landlords claim a \$111.00 water bill that was not paid by the tenant. The tenant's advocate pointed out that clause 7 of the rental agreement included a written in provision that water and garbage were provided by the landlord. This claim is dismissed.

Replace stained carpets - ? The landlords make claim for replacement of carpets for which they have submitted photographs of some staining. However, they have submitted estimates based on square yard and include underlay which I am not certain needs replacement at the tenant's expense. In addition, I believe the carpets are four to five years old and the landlords should be aware that standard depreciation tables which are used in assessing the remaining useful life of carpets set their useful life at 10 years and any award would be prorated. In any event, the photographs, floor plans and per yard estimate have not provided sufficient information for me to reach a determination on this claim. Therefore, I award \$120 for the degradation or further treatment of the stains.

Water softener salt - \$35. The landlords claim this amount on the grounds that the water softener tank had been full when the tenant moved in and should have been replenished when she vacated. I allow this claim, however, the paint chips, furniture markings, vacuum plug and missing rubber ring from the tap on the same claim I attribute to normal wear and make no award.

Filing fee - \$50. Having found merit in the landlords' application, I find that they are entitled to recover their filing fee from the tenant.

I would note that in assessing the landlords' claims, I have taken into account that some of the parts replacements and renovation work has not been done and I am not certain that they are essential or will be done. Therefore, where the losses cannot be firmly proven, I have awarded damages for diminishment of the value. Also, there remains some doubt as to whether the landlords have done everything reasonable to mitigate their losses.

In summary, I find that the tenant owes the landlords an amount calculated as follows:

Replace front door	\$ 467.68.
Scratches on stove control panel	100.00
Scratch on fridge door	100.00
Carpet cleaning	157.50
Clean clothes dryer	45.00
Replace water softener salt	35.00
Carpet damage	120.00
Filing fee	50.00
Sub total	\$1,075.18
Less retained security deposit	- 925.00
Less interest	- 3.49
TOTAL	\$ 146.69

Conclusion

Thus, in addition to authorization to retain the tenant's security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$146.69 for service on the tenant.

