

## **DECISION**

**Dispute Codes:** MNR, MND and FF

### **Introduction**

This application was brought by the landlord seeking a Monetary Order for unpaid rent/loss of rent, damage to the rental unit and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for the items claimed and the filing fee.

### **Background and Evidence**

This tenancy began on September 3, 2008 under a fixed term rental agreement with an end of tenancy date of June 3, 2009 and the tenants vacated on or about May 1, 2009. Rent was \$1,600 per month and the landlord held a security deposit of \$1,000.

This tenancy was the subject of a hearing on September 21, 2009 on the tenants' application, resulting in a Monetary Order for return of the security deposit with interest. During the hearing, the landlord gave evidence that the tenants had vacated prior to the end of the fixed term agreement when they gave up possession on May 6, 2009 according to the landlord and on April 30, 2009 according to the tenants, and they did

not pay the rent for May. The tenants stated that there was a shared understanding that they would be leaving the rental unit when school finished. However, the rental agreement sets the end of tenancy as June 3, 2009 and the tenants concur that they did not give written notice to end the tenancy.

The tenants stated that the landlord's daughter had given consent for the end of tenancy and the state of the rental unit, but the landlord held that her daughter was not her agent or a party to the agreement.

The landlord also submitted claims totalling \$478 for damage to the living room walls and ceiling primarily resulting from the tenants playing pool. The tenants stated that they had not damaged the room and that the landlord's submitted photographs show non-matching ceiling tiles and they were taken some months after the tenancy ended.

The landlord also claims \$1,067 for repairs necessitated by a crack in the shower floor and consequent damage to the underlying structure. The tenants gave evidence that they had reported leaks in the shower head and the landlord concurred that she had a plumber attend on two or three occasions. The tenants said they had not caused the crack in the floor and that they had not noticed it when completing the move-in condition inspection report.

The landlord claims \$200 for the cost of repair to the living room and kitchen walls, while the tenants responded that there was no damage beyond normal wear and tear.

The landlord claims \$125 for cleaning, while the tenants responded that they had cleaned for two days and appliances were included.

## **Analysis**

As to the landlord's claim for unpaid rent, section 45 of the *Act* sets the requirements for tenant's notice to end tenancy and provides that:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The notice requirement to end a periodic tenancy is the same except that the end date specified in the agreement is not applicable. In both cases, the notice must include information prescribed by section 52 of the *Act*.

In this instance, as the tenants did not give the required notice, irrespective of any disagreement over the end date set in the notice, they are responsible for the rent for May 2009 and I find that they must pay the landlord the \$1,600.

As to the landlord's claim for damages, I accept the position put forward by the tenants that the photographic evidence was gathered some considerable time after the tenancy had ended. For that reason, and because there is sufficient doubt as to the extent to which the tenant's contributed to the damage, I cannot confidently assess an amount that the tenants owe.

Combined with the landlord's statement that she had been fully prepared to forgive the damage in view of the tenants' economic status as students and their inexperience until

they made application, I find it reasonable to dismiss the landlord's claims for damage to the rental unit.

Having found substantial merit in the landlord's application, I find that she is entitled to recover the filing fee for this proceeding from the tenants.

### **Conclusion**

I find that the tenants owe to the landlord \$1,600 rent for May 2009 and \$50 for the filing fee for this proceeding. Accordingly, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,650**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

As the tenants hold a Monetary Order for \$1,004.92 from the hearing conducted on September 21, 2009, for the convenience of the parties, the difference is as follows:

Landlord holds order for tenants to pay	\$1,650.00
Tenants hold order for landlord to pay	<u>-1,004.92</u>
<b>Balance owed by tenants to landlord</b>	<b>\$ 645.08</b>

Thus, the parties may balance accounts by payment from the tenants to the landlord of \$645.08.

January 15, 2010.