

DECISION

Dispute Codes: MNR, MND, MNSD and FF

Introduction

These applications were brought by both the landlords and the tenant.

By application of January 15, 2010, the landlords seek a Monetary Order for unpaid rent and utilities, 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.

By application of December 24, 2009, the tenant seeks to make claim for excessive late fees, mitigating circumstances with respect to the December 2009 gas bill and notes that the rental agreement varies from British Columbia residential law.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and damages and authorization to retain the security deposit in set off against the balance owed.

The tenant's application requires a decision on whether there is any relief available to the tenant with respect to the December gas bill and any non-conforming provisions of the rental agreement.

Background, Evidence and Analyses

This tenancy began on July 1, 2009 and the parties entered into a new fixed term rental agreement beginning October 1, 2009 and set to end on October 1, 2010. Rent was \$1,200 per month except for a \$200 discount agreed to for August 2009. Security deposit was to be \$600, but only \$300 of it was paid on June 11, 2009.

The tenant moved out throughout December 2009 but gave up vacant possession at the end of the month.

During the hearing, the landlords presented the following claims and I find as follows:

Unpaid rent - \$4,150. The landlords gave evidence that between August and December 2009, the tenant had an accumulated rent arrears of \$4,150 (detailed in a following table). The tenant did not contest the claim and it is allowed in full.

Lawn mower - \$299. As part of the rental agreement, the tenant was responsible for lawn mowing using a mower supplied by the landlords. At the end of the tenancy, the landlords found the lawn mower covered in snow and no longer in working order. The landlord bases the amount claimed on cost of a new lawn mower from Canadian Tire.

The tenant concurred that the lawn mower had been left out by a family member who had come to cut the grass, but noted that the lawn mower was used, a fact confirmed by the landlords who said it was four years old. The landlords stated that they had enquired of a service shop about having it repaired and were told the cost would probably exceed its value. I find that the tenant is responsible for replacement of the lawn mower with a unit of similar age and quality.

On examining on-line classified ads for used lawn mowers, I find a number available in the range of \$100 and reduce the claim to this amount.

Cleaning - \$225. The landlords claim this amount for seven and one-half hours cleaning and note an additional \$70 cost for cleaning materials not claimed. On the basis of photographic evidence, I find this claim to be reasonable and in keeping with customary rates and it is allowed in full.

Snow removal - \$10. While the rental agreement made the tenant responsible for snow removal, the driveway and walks were in need of clearing at the end of the tenancy. The landlords paid a neighbour \$10 for the task and I find the claim is allowed.

Utilities - \$225. The landlords gave evidence that the tenant had discontinued her account with the natural gas provider as of December 1, 2009 and they transferred the account to their names. While the exact billing is not yet available, the landlords based the amount of the claim on the billing for the same period a year earlier, which they said was much colder. The tenant contested the amount, partly on the grounds that she had concerns about the safety of the gas and having to have appliances re-lit. The landlord gave evidence that a gas inspector had inspected twice and there were no safety problems identified. In the absence of precise billing information for the period, I allow the benefit of the doubt to the tenant and allow one-half of this claim at \$112.50.

Filing fee - \$100. Having found full merit in the landlords' application, I find that they should recover the filing fee for this proceeding from the tenant.

The landlords had applied for other damages, but withdrew those claims in view of the substantial claim for unpaid rent.

As to the tenant's application, I find that her submission over concerns about gas service have been adequately addressed by reduction of the landlord's claim for the

December gas billing and the landlords' proof that there were not issues with the gas service..

On the tenant's concerns of the landlord claiming more than the \$25 late fee allowed by regulation, as that amount was never taken or paid, I find the point is moot and requires no decision beyond the reminder to the landlords.

Similarly, while the rental agreement may deviate from British Columbia residential tenancy law, the parties were reminded that any provisions contrary to the *Act* are unenforceable and the *Act* would prevail.

On balance, and including authorization to retain the security deposit in set off, I find that the tenant owes to the landlords an amount calculated as follows:

August rent owed	\$ 400.00
September rent owed	600.00
October rent owed	1,000.00
November rent owed	950.00
December rent owed	1,200.00
Replace/repair lawn mower	100.00
General cleaning	225.00
Snow removal	10.00
Utilities	112.50
Filling fee	100.00
Sub total	\$4,697.50
Less retained security deposit	- 300.00
Less interest (- 2.51
TOTAL	\$4,394.99

Conclusion

The landlords' copy of this decision is accompanied by a Monetary for **\$4,394.99**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

February 3, 2010