

DECISION

Dispute Codes: MND, MNDC, MNSD, and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for loss of rent, damage to the rental unit and recovery of the filing fee for this proceeding, 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 landlords' claims establish that there was damage to the rental unit, whether it is proven that the tenant caused such damage, and that the amounts claimed are proven and appropriate.

Background, Evidence and Analysis

This tenancy began on February 15, 2009 under a fixed term rental agreement set to on February 15, 2010; however, the tenants moved out on October 31, 2009. Rent was \$700 per month and the landlord holds a security deposit of \$325 paid on February 1, 2009.

The landlord makes claim and I find as follows:

Loss of Rent - \$2,100. The landlord gave evidence that he had not found a new tenant until February 1, 2010 after the tenants had breached the fixed term agreement by leaving early. While section 45 of the *Act* does not permit tenants to give notice to end a fixed term tenancy before the end date stated on the rental agreement, section 7 of the *Act* imposes a duty on the landlord to do whatever is reasonable to minimize his losses. In this matter, the landlord provided no evidence to show that he had advertised the rental unit and, in fact, he stated he had not done so as he believed the tenants were responsible for the rent for the balance of the tenancy. Therefore, I must find that the landlord has not met the duty to minimize his losses. However, based on photographic evidence, I find that the condition in which the tenants left the rental unit would have required one month to prepare it for new tenants. Consequently, I find that the landlord is entitled to one month's loss of rent of \$700.

Replace kitchen floor - \$539. The landlord submitted invoices for \$224 for materials and \$315 for labour for replacing the kitchen floor. While photographic evidence clearly shows damage to the floor, the tenant denied responsibility for it. In addition, the landlord stated that the flooring was approximately 13 years old. I accept the evidence of the landlord that the tenants caused some damage to the floor. However, in the absence of move-in and move-out condition inspection reports, and taking into account the age of the floor, I find that the tenants are responsible for \$75 of the costs of the replacement.

Wall repairs and painting - \$735. The landlord submitted photographs of two large holes in the wall which he believed resulted from the tenants moving. The landlord stated that the unit had been painted approximately two years ago but the tenant stated the paint job was not fresh when they moved in. Taking into account some degree of normal wear and tear and depreciation of the paint job, I find that the damage caused

by the tenants necessitated the repainting and find that they should pay \$300 of this claim.

Repairs to Furnace - \$315. Along with photographs showing that the lint catcher in the gas clothes dryer was packed solid, the landlord submitted a paid invoice to from a plumbing company. The landlord stated that the plumber attributed the damage to the gas furnace to back-pressure from the plugged lint catcher. I accept the landlord's claim that negligence of the tenants in failing to clean out the dryer lint tray caused the damage to the furnace. Therefore, this part of the claim is allowed in full.

Filing fee - \$50. Having found merit in the landlord's application, I find that he is entitled to recover the filing fee for this proceeding from the tenants.

Thus, including authorization to retain the tenants' security deposit in set off, I find the tenants owe the landlord an amount calculated as follows:

Loss of rent	\$ 700.00
Replacement of kitchen floor	75.00
Wall repairs and painting	300.00
Repairs to furnace	315.00
Filing fee	50.00
Sub total	\$1,440.00
Less retained security deposit	- 325.00
TOTAL	\$1,115.00

Conclusion

In addition to authorization to retain the security deposit, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for service on the tenants.

March 24, 2010