

## **DECISION**

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

### **Introduction**

This application was brought by the landlords seeking a Monetary Order for damage to the rental unit, loss of rent, cost of missing fixtures and furnishing, 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.

This tenancy was the subject of a hearing on August 18, 2009 in which the landlord was awarded \$1,200 in rent and loss of rent after the tenants vacated without having given full written notice. The landlord was also awarded the filing fee of \$50 and granted a Monetary Order for \$1,250.

The tenants did not attend the original hearing and made application for a Review Hearing which was dismissed as it was made out of time.

### **Issues to be Decided**

This application requires a decision on whether the landlords are entitled to an award for loss of rent and whether the other claims establish that there was damage to the rental unit, whether it is proven that the tenants caused such damage, and that the amounts claimed are proven and appropriate.

### **Background, Evidence and Analysis**

This tenancy began on January 17, 2008 under a fixed term rental agreement set to end on January 31, 2010. Rent was \$1,200 per month and the landlords hold security and pet damage deposits of \$600 each, totalling \$1,200 and both paid on January 17, 2009.

The landlords make claim and I find as follows:

**Loss of rent for August 2009 - \$1,200.** The landlord stated that the rental unit was left in such a condition that it would not have been possible to have it prepared for new tenants for August 1, 2009 and claims the one month loss of rent. However, I must note that there was construction of a carriage house underway at the time, and the disturbance contributed in large to the tenants wish to leave the fixed term agreement early. In addition, the landlords have provided no evidence to demonstrate that they tried to find tenants to meet the obligation under section 7 of the *Act* "to do whatever is reasonable to minimize the damage or loss" by submission of advertisements of some sort. Moreover, the landlord conceded that the rental unit has not been rented to this day. Therefore, this part of his claim is dismissed.

**Missing Property - \$1965.** The landlords have submitted an itemized list with before, and after photographs illustrating a number of missing fixtures and furnishings from the rental building. These include a free standing kitchen cabinet, a medicine cabinet, a curtain rod, under counter lights, antique rose shaped hooks, bedroom curtains and hardware, and a number of smaller items.

The tenants claimed no knowledge of the missing items and stated that they had been visited by an RCMP officer who found no evidence of the missing items in their possession. They stated that the landlord was sitting on his porch watching while they moved out on July 1<sup>st</sup> and 2<sup>nd</sup> and was aware they had not taken the items claimed.

The stated that, while the construction was going on, there were no bathroom facilities available for the workers, and that they had reluctantly permitted the workers to use their washroom

The tenants conceded that when they left the rental unit, they simply left the keys on the kitchen counter and left the door open for the convenience of the workers.

The landlord stated that matters would not have come to where they had if the tenants had accepted his invitations to join him in completing a move-out condition inspection report.

The landlord stated that he did not enter the rental unit until July 15, 2009, the end date given on the tenants' notice.

The landlord submitted no receipts to substantiate the value of the missing items and stated his claims were ballpark estimates.

I accept the evidence of the landlord that the items were missing and I accept the evidence of the tenants that they did not take the items claimed.

However, I find that the tenants breached their responsibilities in failing to return the keys to the landlords across the road and advise them that the rental unit was open and that they would not be returning..

I further find that the landlords contributed to the losses by not at least checking to make sure the building was secure when, to all appearances, the tenants were gone.

As to the allocation of the damages, as the landlord's claims are based on unsubstantiated estimates and taking into account depreciation, I find the benefit of doubt must pass to the respondents and reduce the estimated value to \$1,200.

I further find that that amount should be split equally between the parties due to the failure of each to exercise due diligence under the circumstances and leaving the building an easy target for intrusion. Therefore, I find that the tenants owe the landlord \$600 for the lost items.

**Security and Pet Damage Deposits - \$1,200.** Taking into account that the landlord currently holds an unsatisfied Monetary Order for \$1,250, I exercise the discretion granted under section 72(2)(b) of the *Act* hereby authorize and order that the landlords may retain the security and pet damage deposits of \$1,200 in set off against the Monetary Order currently held.

**Filing fee - \$50.** Having found that this dispute arose from failure on the part of both parties to meet their obligations under the legislation and rental agreement, I find that they should share equally in the filing fee and award the landlord \$25 on this claim.

Thus, I find that accounts balance as follows:

Monetary Order currently held by landlord	\$1,250.00
Award to landlord for lost items	600.00
Filing fee	<u>25.00</u>
Sub total	\$1,875.00
Less retained security and pet damage deposits	- 1,200.00
Less interest on deposits (January 17, 2008 to date)	- 17.21
<b>TOTAL</b>	<b>\$ 657.79</b>

## Conclusion

1. **I HEREBY AUTHORIZE AND ORDER** that the landlords may retain the \$1,200 in pet damage and security deposits plus \$17.21 in accumulated interest;
2. This will satisfy all but \$32.79 of the Monetary Order of August 18, 2009 for \$1.250 currently held by the landlord and the difference is carried forward to a new Monetary Order.
3. I hereby order that Monetary Order of August 18, 2009 is no longer of force and effect;
4. In addition to authorization to retain the security and pet damage deposits in set off, the landlords' copy of this decision is accompanied by a Monetary Order for \$657.79, enforceable through the Provincial Court of British Columbia, for service on the tenants.

March 26, 2010