

DECISION

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

Introduction

This application was brought by the landlord seeking a Monetary Order for damage to the rental unit, damage or loss under the legislation or rental agreement, utilities, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the claims presented based on whether the damage or losses are proven, whether they are attributable to the tenants and whether the amounts claimed are fair and substantiated.

Background and Evidence and Analysis

This tenancy began on July 1, 2009 under a fixed term agreement set to end on June 30, 2010. Rent was \$2,250 per month and the landlord holds a security deposit of \$1,125 paid on June 26, 2009.

During the hearing, the parties gave evidence that the tenants had, on November 15, 2009, given notice of their intention to conclude the tenancy on November 30, 2009. By a combination of advertising efforts and good fortune, the parties were able to find new tenants for December 1, 2009.

During the hearing, the landlord presented and the tenant responded to the following claims on which I find as follows:

House cleaning - \$150. The landlord submits a paid invoice from a cleaning company and a letter from the tenants who followed the subject tenancy noting a need for general cleaning to the extent that the move-in date had to be postponed. This part of the claim is allowed in full.

Waterfall/pond feature pump salvage and winterizing - \$100.00. The landlord makes this claim on the grounds that shortly before the tenancy ended, he attended the rental unit and found four inches of ice on the surface of the pond. He stated he had to break up the ice to remove the pump and put it into storage. The tenant stated that he had run the pump periodically in the cold weather to guard against freezing and that he had met the previous owner of the home who had told him the pump could remain in place during the winter, although had used a heater as he had fish in the pond. He stated that the landlord had not given him detailed instructions.

Section 6(3)(c) of the *Act* states that "A term of a tenancy agreement is not enforceable if...the term is not expressed in a manner that clearly communicates the rights and

obligations under it.” In this instance, the rental agreement simply states, Pond and waterfall features to be maintained by the tenant. In the absence of specific direction to remove the pump, I find that interpretation must fall to the reasonable person test, under which I do not believe the tenant would be expected to know that he should remove the pump and store it for winter. This claim is dismissed. .

Tool to remove pump - \$16.22. Given that I cannot find the tenants responsible for removing the pump, I cannot ascribe to them the cost of the tools to do so. This part of the claim is dismissed.

Pond cleaning in spring, estimate - \$151.20. The tenant gave evidence that he had routinely cleaned the pond, although there may have been some material in it at the end of the tenancy. Irrespective of that, I find that the pond would require cleaning by spring in any event and the cost of that does not properly belong to tenants who vacated in November. The claim is dismissed.

Carpet cleaning - \$236.25. Despite the tenant's claims to have spot cleaned the carpets, on the basis of photographic evidence and a paid invoice, I find that the landlord is entitled to recover this cost and it is allowed in full.

Water bill - \$193.12. The tenant concedes responsibility for this claim and it is allowed in full.

Lawn repair in spring, estimate - \$146.12. The landlord makes this claim on the grounds that the tenants did not keep up watering as agreed. The tenant gave evidence that he had reported to the landlord that the lawn was failing, a matter that was eventually remedied by servicing of the sprinkler system arranged by the landlord.

By photographic evidence, I find the lawn to be in a dormant state and doubt that it would require anything other than routine preparation in the spring. This claim is dismissed.

Replace dead plants and shrubbery in spring, estimate - \$100. While I note one clearly dead conifer shrub among the photographic evidence, it cannot be said for certain that this arose from neglect of watering. The claim is dismissed.

Paint nine walls - \$175. The landlord gave evidence that it was necessary to paint nine walls due to a poor patching and touch up job done by the tenants and the claims only the materials cost as he did the work himself. Taking into account some allowance for normal wear and tear and the passage of part of the useful life of the paint job, I find that the tenants are responsible for \$75 of this claim.

Replace switch plate and light bulbs - \$24.50. This claim is allowed in full.

Three sets of photos - \$126. This cost falls within the category of hearing preparation and cannot be claimed.

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

I find that the landlord may retain the amount owed from the tenants' security deposit, amounting to a balance of accounts as follows:

Tenants' Credits		
Security deposit (no interest due)	\$1,125.00	\$1,125.00
Award to Landlord		
House cleaning	\$150.00	
Carpet cleaning	236.25	
Utilities	193.12	
Painting	75.00	
Switch plate and light bulbs	24.50	
Filing fee	50.00	
Sub total (Award to landlord)	\$728.87	- 728.87
TOTAL (Amt of security deposit due to tenants)		\$ 396.13

Conclusion

The landlord has proven claims for \$728.87 and I hereby authorize and order that he may retain that amount from the tenants' security deposit.

In the interest of bringing a conclusion to this matter, the tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$396.13, the balance of the security deposit, for service on the landlord.

April 1, 2010