

## **DECISION**

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

### **Introduction**

These applications were brought by both the landlord and the tenants.

By application of December 23, 2009, the landlord seeks a Monetary Order for unpaid utilities, damage to the rental unit, damage or loss under the legislation or rental agreement, recovery of his filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of March 31, 2010, the tenants seek a Monetary Order for return of their security deposit in double, compensation for damage or loss under the Act and recovery of the filing fee for this proceeding. The tenants claims include recovery of costs of preparing their submissions including photographs and copying , but such costs are not recoverable under the legislation.

### **Issues to be Decided**

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid utilities and damages, recovery of the filing fee and authorization to retain the security deposit in set off against the balance found owing.

In assessing the landlord's claims, I must take into account whether it is proven on a balance of probabilities that the claimed damages exist, that they were caused by the tenants and that the amount claimed is fair, reasonable and proven. The onus is on the application to prove his claims.

The tenants' application requires a decision on whether the security deposit should be returned in double and whether the filing fee should be recovered.

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

This tenancy began on September 23, 2008 and ended on November 30, 2009. Rent was initially \$1,750 per month, subsequently reduced to \$1,500 per month, and the landlord holds a security deposit of \$875 paid on September 22, 2008.

As to the tenants' application, section 38 of the *Act* provides that, within 15 days of the end of the tenancy or receipt of the tenants' forwarding address in writing, the landlord must either return the deposit or make application for dispute resolution to claim upon it on penalty under section 38(6) of having to return it in double.

In this matter, the tenants submitted a copy of the letter providing their forwarding address to the landlord dated December 12, 2009. The landlord made application for dispute resolution, including a request to claim against the security deposit on December 23, 2009.

I find that the landlord made application was made within 15 days of receipt of the forwarding address and I accept the evidence of the landlord that he attempted to complete a joint move-out inspection with the tenants but abandoned the task when the tenants became argumentative.

Therefore, the tenants' application is dismissed in its entirety without leave to reapply.

As to the landlord's application, he makes claim and I find as follows:

**Unpaid water bills - \$352.38.** The rental agreement did not include water with the rent and the landlord submitted paid invoices in this amount. This claim is allowed in full.

**Shed door - \$50.** While no remedial action has been taken, the landlord provided photographs of the shed door showing some scratches and markings on the door and basis this claim on loss of value. The tenants state that the door is little changed from the time they moved in. I find that there is some defacement beyond normal wear and tear and, in the absence of a more concrete evaluation of the damage, I allow \$15 on this claim.

**Weather stripping, shed door - \$40.** Repair has not been done, but I find some damage beyond normal wear and tear and allow \$10 on this claim.

**Screen replacement - \$28.** The landlord makes this claim as there was a four inch square hole in one of the screens. The landlord stated that he believed the screens were five to six years old. Taking into account depreciation, I allow \$14 on this claim.

**Remove oil soaked area in yard - \$65.** The landlord provided a photograph of a large bowl of oil in an area of the yard and evidence of oil having been spilled into the soil which he stated he would have to dig out and dispose of. The tenants conceded that the container had been left behind but stated that waste oil can be disposed of at Canadian Tire for no charge. I allow \$25 on this claim.

**Yard work - \$75.** Under the rental agreement, the tenants were responsible for lawn and yard maintenance. The landlord provided photographic evidence in support of his claim that the yard had not been maintained and makes this claim for week wacking and raking left undone at the end of the tenancy. The tenant stated that she had done the lawn weekly during the growing season, that the lawn was full of weeds throughout, and that photos taken at the end of November could not accurately reflect the level of lawn care. On the basis of the photographic evidence, I find that the lawn maintenance had been somewhat less than the norm and allow \$30 of this claim.

**Replace front door lock - \$50.** The landlord makes this claim on the grounds that the tenants did not return the key for the front door and he had to replace the lock. However, he did not have the receipt for this cost and it is dismissed.

**Carpet cleaning - \$100.75.** An addendum to the rental agreement provides that the tenants will have the carpets professionally cleaned at the end of the tenancy. The landlord submitted a receipt in support of this claim and it is allowed in full.

**Replacement of five blinds - \$100.** The landlord submits receipts for \$70.33 dated January 15<sup>th</sup> and 16<sup>th</sup> 2010. He stated that the blinds were very inexpensive and that replacement was more economical than cleaning and repair. He also submitted photographic evidence showing that at least one slat on one blind had been damaged. I find that the landlord has not proven the total amount of this claim but allow I am persuaded that the landlord is entitled to \$35 on this claim and allow that amount.

**Remove tape residue from around windows - \$65.** The landlord claims this amount for removing tape residue from around the windows in the rental unit. The tenant stated that only one window required the work and that the following tenants agreed to do the work for \$35. In the absence of more definitive evidence, I will allow the \$35 on this claim.

**Replace interior door knobs - \$220.** The landlord makes claim that the tenants had taken in additional tenants and had changed some interior passage door hardware to locking hardware and did not provide him with keys and that they had damaged another passage set. I am only able to find receipts in the landlord's evidence to support \$33.37 of this claim and in the absence of a statement of time for the landlord's labour, I allow only a total of \$50 on this claim.

**Garbage removal and dump - \$85.** The tenant gave evidence that she had taken a load to the dump and the fees were \$6.00. As with some other claims, the landlord has not fully articulated the time put into gathering the load, and therefore, I must reduce the award on this claim to \$30.00

**Overseeding lawn - \$100.** Given the tenants earlier evidence that the lawn always had been laden with weeds, I decline to make an award on this claim.

**Replace shed lock - \$25.** On the photographic evidence, and in the absence of a detailed receipt and statement of labour time, I allow \$10 on this claim.

**Power washing of Driveway - \$63.** The landlord's photos clearly show oil spills on the blacktop driveway and the landlord has submitted an estimate for \$63 to remove it. This claim is allowed in full.

**Filing fee - \$50.** Having found general merit in the landlord's application, though the evidence was occasionally insufficient, I find that he should recover the filing fee for this proceeding from the tenants.

In addition, pursuant to section 72(2)(b) of the Act, I find that the landlord may retain the security deposit in set off against the amount owed.

Thus, I find that accounts balance as follows:

<b>Tenants' Credits</b>		
Security deposit	\$875.00	
Interest due ( September 22, 2008 to date)	<u>3.62</u>	
Sub total	\$878.62	<b>\$878.62</b>
<b>Award to landlord</b>		
Water bills	\$352.38	
Damage to shed door	15.00	
Weather stripping	10.00	
Screen replacement	14.00	
Removal oil in yard	25.00	
Yard work	30.00	
Carpet cleaning	100.75	
Replace blinds	35.00	
Remove tape residue	35.00	
Interior door knobs	50.00	
Garbage removal	30.00	
Replace shed lock	25.00	
Power wash driveway	63.00	
Filing fee	<u>50.00</u>	
Sub total	\$835.13	<b>- 835.13</b>
<b>TOTAL (Remainder of security deposit due to tenants)</b>		<b>\$ 43.49</b>

## Conclusion

**I hereby authorize and order** that the landlord may retain \$835.13 from the tenants' security deposit and must return \$43.49. In the interests of bringing this matter to conclusion, the tenants' copy of this decision is accompanied by a Monetary Order for \$43.49, enforceable through the Provincial Court of British Columbia, for service on the landlord.

April 14, 2010