

DECISION

Dispute Codes: MND, MNR, MNSD, and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for damage to the rental unit, unpaid rent, damage or loss under the legislation or rental agreement and recovery of the filing fee for this proceeding.

This hearing originally convened on March 9, 2010 but was adjourned at the request of the tenants on the grounds that the female tenant was unavailable for medical reasons and the male tenant did not feel his facility at speaking English was sufficient to permit his full participation in the hearing.

When the hearing reconvened, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

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 September 1, 2009, although the tenants began to move some belongings in August into the rental unit which was undergoing renovations at that time. The tenants moved out on October 31, 2009 and new tenants took possession the following day.

Rent was \$1,350 per month and the tenants paid a security deposit of \$675 which, according to the landlord was applied to the October rent at the request of the tenants.

During the hearing, the landlord presented the following claims on which I find as follows:

Unpaid utilities - \$275.30. The landlord submits a letter from the municipal government dated December 23, 2009 advising that the utilities account in the name of the tenants has not been paid. The letter advises that if it is not paid, the amount will be transferred to the landlord's tax account, and will be removed if the city is successful in its attempts to collect from the tenants. It further advises that landlord not to pay the account unless he receives the funds from the tenants as that would clear the tenants' account. However, the letter makes no reference to the billing period claim and the landlord did not know when, or even if, the new tenants had transferred the account to their name. Therefore, in the absence of an invoice indicating billing period, or proof that the new tenants transferred the account into their names, I cannot make an award on this claim. Therefore, it is dismissed.

Replacement of Fireplace Glass - \$273. At their own initiative, the tenants contracted with a local company to service the gas fireplace. A notation on the invoice by the service person notes that, "Fireplace glass broke when I removed it. Return at later date to repair."

According to the landlord, he attempted to arrange for the supplier to replace the glass, but was told they would pay only half, an offer which he refused. The landlord

subsequently contracted with another supplier to replace the glass and now claims the full \$273 from the tenants.

While I find that the principle of privity of contract places the burden on the tenants to ensure that the glass was replaced, I find that, in refusing the offer of half from the first supplier, the landlord has failed in his duty "...to do whatever is reasonable to minimize the damage or loss," as required under section 7(2). Therefore, I reduce the award under this claim to half the amount claimed, \$136.50.

Work exchanged for one-half month's rent - \$405. The parties had an agreement under which the tenant, said to be skilled in such work, would provide the labour to replace the kitchen counter top in exchange for one half month's rent. The tenant removed the old counter top but did not fit and install the new one. In the absence of corroborating evidence as to the amount of work required of each party, I find that the estimated value of the work, one half month's rent, should be split equally. I allow \$337.50 on this claim.

Clean house for two hours - \$90. The landlord stated that the \$45 hourly rate was based on the rate the tenant was to charge him for the counter work. I find that the rate substantially exceeds the prevailing wages for housekeeping and reduce the award on this claim to \$40.

Move dryer outlet - \$45. The landlord makes claim that the tenants move the clothes dryer and its electrical outlet to suit their needs and makes this claim for the cost of his labour in returning it to its previous location. This claim is allowed in full.

Remove dog barriers, four hours - \$180. The tenants had installed fencing for their dogs which the landlord wished removed at the end of the tenancy. I find that the landlord has every right to have the property restored to its pre-tenancy condition, but I find the hourly rate to be high. I will allow \$20 per hour on this claim for a total of \$80.

Repair yard from dog damage - \$100. The landlord stated that the tenants dogs had dug a number of holes in the yard and claims \$100 to remedy the damage, although the work has not yet been done. In the absence of receipts or illustrative evidence of the degree of damage vs the condition of the yard prior to the tenancy, I am unable to ascertain a fair estimate of the damage and reduce the award on this claim to \$50.

Patch and paint cement around basement windows - \$45. The landlord stated that the tenants had installed wooden blocks to secure the inward opening basement windows by drilling and putting sinkers into the concrete. For removal and restoration he claims \$45 which I find to be reasonable compensation for the work described. This claim is allowed in full.

Cleaning and damage to back porch - \$90. The landlord stated that the back porch had been covered with new vinyl immediately prior to the tenancy. He states that the tenants' large dogs left stains and scratches on the new vinyl. While I find that, on the balance of probabilities, the porch was subject to some degradation due to the large dogs, I do not have sufficient evidence to award the full claim. I allow \$45 on the claim.

Remove left items - \$90. On the basis of evidence given at the hearing by the landlord, I find this claim to be higher than warranted and allow \$25.

Damage to back door handle - \$30. The landlord stated that the tenants had agreed to install door stops as part of their agreement, and their failure to do so resulted in damage to the door knob. This claim is allowed.

Dump fees - \$12. This claim, based on two trips at \$6 each is allowed in full.

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

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Replace fireplace glass	\$136.50
Incomplete work exchanged for rent	337.50
Clean house for two hours	40.00
Move dryer outlet	45.00
Remove dog barriers	80.00
Repair dog damage to yard	50.00
Patch and paint cement around basement windows	45.00
Cleaning and damage to back porch	45.00
Remove left items	25.00
Damage to back door handle	30.00
Dump fees	12.00
Filing fee	50.00
TOTAL	\$896.00

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$896.00 for service on the tenants.

April 26, 2010