

DECISION

Dispute Codes: MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for unpaid rent, damages, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

As a preliminary matter, at the commencement of the hearing, the tenants advised that as a result of a hearing on February 11, 2010 on their application, the Dispute Resolution Officer had ordered the security deposit returned to them and, therefore, it could not be considered in the present hearing.

However, in referring to that decision, I find that the tenants' application was "dismissed in its entirety." While there was discussion of the security deposit, the DRO simply reiterated the obligations under section 38(1) of the *Act*. This section requires that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must either return the security deposit or make application to claim upon it.

She observed that the landlord had the tenants' forwarding address as of the date of the hearing on February 11, 2010. In fact, the landlord brought the present application on February 18, 2010, well within the 15-day time limit. Therefore, the security deposit remains available to the landlord if the present application succeeds.

Issues to be Decided

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

Background and Evidence and Analysis

This tenancy began on May 1, 2009 under a 12-month fixed term agreement set to end on April 30, 2010, and ended on February 5, 2010. Rent was \$750 per month and the landlord holds a security deposit of \$375 paid on or about May 1, 2009.

During the hearing, the parties gave evidence that the tenants had, on January 5, 2010 given notice of their intention to conclude the tenancy on February 5, 2010 having been without water since December 11, 2009 due to a frozen water line. Water service was not restored until January 11, 2010.

The tenants paid no rent for January or February, having declined the landlord's offer of a rent reduction, prepaid use of a community pool for bathing, and temporary arrangements for carrying water for general use. Therefore, the landlord claims rent for January and loss of rent for February.

The parties concur that the tenants advised the landlord by email beginning December 11, 2009 of the broken water line.

In consideration of the request for rent, I note that section 33 of the *Act* which sets out the provisions for emergency repairs, includes a list of some typical emergency repairs including subsection (1)(c)(ii): "damaged or blocked water or sewer pipes or plumbing fixtures."

Clearly, the *Act* regards the provision of water as a material term of all rental agreements.

Section 45 of the *Act* prescribes the requirements for tenants' notice to end tenancy, and, applicable to both month to month and fixed term tenancies, provides that:

3) If a landlord has failed to comply with a material term of the tenancy agreement ... and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Notice was given on January 5, 2010 and a temporary fix restored water on January 11, 2010. Therefore, I find that the tenant notice served on January 5, 2010 was effective and their tenancy ended on February 5, 2010. The tenants have no rent obligation beyond that.

During the period in which the landlord was attempting to accommodate the tenants, she suggested a rent reduction of half which I find appropriate under the circumstances.

Thus, I find that the tenants owe to the landlord \$375 rent for January plus the per diem for five days of February of ($\$375/28 = \7.81 per day $\times 5 = \$39.05$), a total obligation of \$414.05.

I cannot address the question of December rent as that was on the tenants' application for the hearing on February 11, 2010 and it is *res judicata* (previously disposed of).

The landlord claims a further \$100 for yard cleanup and disposal which I find to be reasonable and it is allowed in full.

The landlord also claims \$100 for storage of goods left behind by the tenants. However, during the hearing, the landlord stated that she had forbidden the tenants to enter the property and I find, therefore, that she cannot claim storage. During the hearing, the parties did make arrangements for the tenants to return to pick up one outboard motor and one barbeque.

The landlord also asked that the tenants remove a steel frame left on the property adjacent to the septic system. The tenant stated he had been directed by the landlord's property manager and father to place something in that location to ensure no heavy vehicles were driven over it. The tenant stated that he had found the frame on the property and that the landlord's father had helped him to place it there, an assertion challenged by the landlord. The landlord stated she had an estimate of \$183.75 to remove it. On the basis of the evidence before me, I cannot determine which of the parties owns and is responsible for the steel frame.

However, I note that it is constructed of channel iron and I beams that may well be of some value and disposable by advertising on some free web site such as Craigslist or UsedKootenays.com. In any event, I find that the landlord has not made reasonable effort to reduce this claimed loss as required under section 7(2) of the *Act* and the claim is dismissed.

The landlord claimed \$200 for travel costs, etc. from her home to the rental unit, a claim I must dismiss as administrative costs which are not recoverable under the *Act*.

Having found fundamental merit in the landlord's application, I find that she is entitled to recover the filing fee for this proceeding from the tenants.

I further find that the landlord is entitled to retain the security deposit in set off against the balance owed.

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

January rent	\$375.00
February rent (to February 5, 2010)	39.05
Clean up and disposal	100.00
Filing fee	<u>50.00</u>
Sub total	\$564.05
Less retain security deposit (no interest due)	- 375.00
TOTAL	\$189.05

Conclusion

In addition to authorization to retain the tenants' security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$189.05 for service on the tenants.

April 29, 2010