

## **DECISION**

Dispute Codes      MND, MNSD, MNDC

### **Introduction**

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary order for damage and/or compensation for loss;
2. An order to be allowed to retain the security deposit; and
3. A monetary order to recover the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

### **Summary of Background**

The landlord testified that this tenancy began in January 2007. The landlord says that on January 29, 2010 at approximately 7 pm. The tenant gave notice that he intended to vacate the rental unit on February 1, 2010. The landlord says she placed ads in the local papers and on line attempting to re-rent the premises for the month of February but was unable to do so. The landlord wishes to recover \$590.00 for February rental loss.

The landlord says that when the tenant vacated he did not clean the rental unit and he left items of furnishings and car parts behind. The landlord says the tenant smoked in the rental unit despite the fact that it was a non-smoking unit. The landlord says there was extensive cleaning required to rid the rental unit of the nicotine stains, odour and burns to the carpet. The landlord says she expended \$225.00 for cleaning services. The landlord also claims the sum of \$75.00 to cover the costs of removing debris such as old tires and furniture left behind by the tenant evidence the landlord has submitted invoices for the cleaning and garbage removal. As well the landlord has submitted copies of advertisements placed on line and in the local newspaper attempting to re-rent the premises for the month of February.

The tenant says he vacated the rental unit in accordance with Section 45(3) of the Act which states:

If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

The tenant says the landlord was ordered by the Residential Tenancy Branch in May 2009 to make repairs to the tenants sliding patio door which had been broken for two and a half years. The tenant says the landlord did not make those repairs and he therefore vacated the rental unit in accordance with Section 45(3).

The tenant says that the rental unit was never a “non-smoking” unit and this had been decided in previous decision rendered by the Residential Tenancy Branch. The tenant agrees that he smoked in the rental unit. He says he smoked in one area where he placed an area rug on top of the rental unit’s carpeting.

The tenant says he was unable to clean the rental unit when he vacated because he feared for his safety. The tenant says the landlord was acting very irrational the day of his move-out. The tenant says the landlord was behaving in an extremely unorthodox manner and he believed she may have consumed alcohol or drugs. The tenant says the landlord blocked his vehicle and eventually he called the RCMP. The tenant says the RCMP told him to leave the area right away. The tenant says he did as the RCMP instructed him leaving behind a leather recliner, a stool a mattress, a cutting board and some tires which he was unable to load into his truck.

### **Analysis and Findings**

The Act requires a tenant to give 30 days’ written notice prior to vacating a rental unit. The parties agree that the tenant did not give 30 days’ written notice. The tenant says he relied on the provisions of Section 45(3) that allow him to leave without notice because the landlord had failed to comply with a material term of the tenancy agreement. The tenant submits that the material term not addressed is that the landlord had not made repairs to the patio door ordered by the Residential Tenancy Branch in May of 2009.

A tenant may end a tenancy for breach of a material term but the standard of proof is high. It is necessary to prove that there has been a significant interference with the use of the premises. To determine the materiality of a term, a dispute resolution officer will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

It falls to the person relying on the term, in this case the tenant, to present evidence and argument supporting the proposition that the term was a material term. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. The dispute resolution officer will look at the true intention of the parties in determining whether or not the clause is material.

I accept the evidence of the tenant that he vacated because the landlord did not make repairs to the glass sliding door. However, I find that the tenant has failed to show how this was a material term of the tenancy. Further, he has failed to show that it was a material term of such importance that the tenant could end the tenancy without proper notice. I make this finding accepting that a landlord is responsible for making repairs and accepting that the landlord in this case was ordered to make these repairs in May 2009. However, when the landlord did not make repairs, the evidence shows the tenant did not take any formal steps to enforce the repair Order. However, after having taken no steps to resolve the issue for 8 months the tenant decides to vacate the rental unit citing the issue a material term. I find that the tenant's own actions show that the broken patio door was not a material term of much importance at all. I therefore find that the tenant vacated the rental unit without proper notice and I will allow the landlord's claim for rent for the month of February 2010 in the sum of \$590.00.

With respect to the landlord's claim for cleaning costs and garbage removal in the sum of \$300.00 I find that the tenant is responsible for these sums. When a tenant vacates a rental unit he/she is required to clean the rental unit. The tenant vacated the rental unit on short notice by his own choice. If the tenant had given proper notice he would not have had only a few days to clean the rental unit and remove all of his goods. With respect to the cost of cleaning, whether the rental unit was a non-smoking unit or not, the evidence of both parties is that the tenant smoked in the rental unit. I therefore find that it is reasonable and probable that the landlord incurred an expense above and beyond that which might have been charged to clean a unit after it had been occupied by a smoker for over 3 years. With respect to the tenant's claims that the RCMP advised him to leave the area and he was therefore unable to clean or remove all his goods, the tenant has failed to provide sufficient evidence to demonstrate that this was in fact the instructions of the RCMP or that there was any real risk to the tenant at the time of the move-out.

The landlord requests to be allowed to retain the security deposit in partial satisfaction of this claim and I will grant an order in that regard.

Having been successful in this application I also find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Calculation of Monetary Order in favour of Landlord:

Rental Arrears for Notice period	590.00
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Cleaning and garbage removal costs	300.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest from December 15, 2007 to the date of this Order	-306.74
<b>Total Monetary Award in favour of Landlord</b>	<b>633.26</b>

## Conclusion

The landlord is provided with a formal Order in the above terms. The tenant must be served with a copy of the order as soon as possible. Should the tenant fail to comply with the Order the Order may be filed an enforced as an Order of the Provincial Court of British Columbia.