

## **DECISION**

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

### **Introduction**

This application was brought by the tenants on March 22, 2010 seeking Monetary Order for damage or loss under the legislation or rental agreement, orders for repairs, emergency repairs and landlord compliance, reduced rent and recovery of the filing fee for this proceeding.

The tenants subsequently amended their application on April 7, 2010 to include a claim to set aside a Notice to End Tenancy for unpaid rent and again on April 30, 2010 to include claims for post-moving out expenses.

Despite having been served with the Notice of Hearing sent by registered mail on March 24, 2010, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

## **Issues to be Decided**

As this tenancy has now ended, the requests for orders for landlord compliance and repairs are now moot as is the request for return of the security deposit which was awarded to the landlord in a previous hearing. The application now requires a decision on whether the tenants are entitled to rent abatement and a Monetary Order for damage or losses under the *Act*.

## **Background and Evidence**

The tenancy began on March 1, 2010 under a four-month fixed term rental agreement. Rent was \$1,600 per month and the tenants paid a security deposit of \$800.

As a result of concern of the landlord's refusal to keep to his promise to clean and remedy deficiencies itemized hereinafter, on March 31, 2010, the tenants gave the landlord written notice of their intention to vacate the rental unit as soon they found suitable housing.

They declined to pay the April rent and were served with a Notice to End Tenancy. The landlord applied for a Direct Request proceeding and was granted an Order of Possession on and a monetary award for unpaid rent, authorization to retain the security deposit in set off and recovery of his filing fee, an award totalling \$1,650.

The tenants amended their application to contest the landlord's application, but the applications were not joined as would have been preferable. In any event, the tenant gave evidence that the April rent had not been paid.

Section 26 of the *Act* states that, "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations

or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

The tenants vacated the rental unit on April 25, 2010 pursuant to the Order of Possession.

During the present hearing, the tenant gave evidence that on viewing the rental unit on February 24, 2010, she noted that it was very dirty and in need of some immediate repairs. However, she accepted the landlord’s promise that it would be thoroughly cleaned and repairs made before the tenants moved in.

She stated that, when they moved in, none of the cleaning had been done, refuse from the former tenants remained and none of the required repairs had been done. As a follow up to verbal requests, the tenants wrote to the landlord on March 9, 2010 listing the matters requiring attention, including:

1. Powerhead on central vacuum not working;
2. Washer taps leaking
3. Kitchen sink plugged, draining leaking and faucet spraying;
4. Sink and toilet off master bedroom not working;
5. Three of four elements on the stove not working;
6. No mailbox key;
7. BBQ and plant from former tenants still in yard;
8. Landlord’s large aquarium remains in dining room and deepfreeze, fridge, etc. left in garage;
9. Landlord failure to conduct move-in inspection;
10. House uncleaned on move-in;
11. Apparent addendum to rental agreement not seen by or provided to tenants.

The tenant gave evidence that the landlord’s response was to repeat that the rental unit was for sale and flat refusal to remedy any of the problems noted. In fact, the property

was shown several times during the tenancy and the tenant stated that the purchaser had told her the possession date was May 7, 2010.

In order to make the residence liveable for them and their two children, the tenants made repairs for which they claim tenant labour and materials (receipts and comprehensive photographic evidence provided) and on which I find as follows:

**Replace deadbolt on patio door - \$135.** This claim pertained to a sliding glass door that was blocking egress from the home. Given the safety considerations, I consider this to be an emergency repair and allow this claim in full.

**Fix toilet & sink in upper main bathroom - \$112.00.** I find these repairs to be fundamental necessities under a landlord's obligations to maintain and repair pursuant to section 32 of the Act and allow this claim in full.

**Fix kitchen faucet - \$62.** Claim allowed in full.

**Emergency plumbing - \$660.** The tenants make this claim for repair to the plugged kitchen sink, repair of the toilet off the master bedroom and repair of the washer taps. In the absence of an itemized account, I find this charge to be somewhat high and reduce the award to \$200.

**Repair toilet in half-bath on main floor - \$75.** This claim is allowed in full.

**General cleaning - \$225.** On the basis of photographic evidence I find this claim to be reasonable and it is allowed in full.

**Clean out garage - \$85.** As above, allowed in full.

**Cleaning blinds - \$175.** Without a detailed accounting, I find this claim to be high and reduce the award to \$50.

**Carpet cleaning - \$296.53.** This claim is allowed in full.

**Moving, storage & other post moving claims.** As this tenancy ended under an Order of Possession, the tenants cannot make claim for post moving costs. Hearing preparation costs are not allowable.

**Rent abatement - \$800.** Given that the tenants entered into the rental agreement based on the landlord's misrepresentations that the rental unit would be clean and in good repair, I find that the tenants are entitled to a rent abatement of \$400 for each of the two months of the tenancy, the first by way of return of rent paid in March, and the second in set off against the monetary award granted to the landlord.

**Filing fee - \$50.** Having found substantial merit in the tenants' application, I find that they are entitled to recover their \$50 filing fee from the landlord.

I would further observe that the work of the tenants in cleaning and repairs may well have contributed in large to landlord's success in marketing the property.

I find that the landlord owes to the tenants an amount calculated as follows:

Patio door deadbolt	\$ 135.00
Fix toilet & sink in upper main bath	112.00
Fix kitchen faucet	62.00

Emergency plumbing	200.00
Repair toilet in half-bath	75.00
General cleaning	225.00
Clean garage	85.00
Clean blinds	50.00
Clean carpets	296.53
Rent abatement	800.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$2,090.53</b>

## Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for \$2,090.53, enforceable through the Provincial Court of British Columbia, for service on the landlord.

May 7, 2010