

## **Decision**

**Dispute Codes:** MNR, MND, MNSD, FF

### **Introduction**

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent; compensation for damage to the unit, site or property; retention of the security deposit; and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to any or all of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, the fixed term of tenancy was from May 1, 2009 to April 30, 2010. Rent in the amount of \$1,125.00.00 was payable in advance on the first day of each month. This particular fixed term is the third consecutive fixed term of tenancy between these parties with regard to the same rental unit.

A security deposit of \$475.00 was originally collected on or about November 11, 2006, and was retained by the landlord for the duration of the three fixed term tenancies. A move-in condition inspection was undertaken at approximately the same time.

By letter dated November 26, 2009, the tenants gave notice to the landlord of their intent to end the tenancy effective February 1, 2010. Subsequently, the tenants vacated the unit toward the end of January 2010, and paid rent in full to the end of February 2010. A move-out condition inspection and report were completed on March 2, 2010.

There appears to be no dispute between the parties that a bedroom wall was damaged during the tenancy, and that the tenants replaced carpeting in the bedrooms with unfinished wood flooring.

The landlord commenced craigslist and newspaper advertising for new renters in early December 2009. Ultimately, new renters were found effective March 15, 2010, however, rent was reduced from \$1,125.00 by \$150.00 to \$975.00 per month.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

The separate aspects of the landlord's application and my findings around each are set out below.

**\$100.00\***: *bedroom damage*. Based on the agreement reached between the parties during the hearing, I hereby find that the landlord has established entitlement to the full amount claimed.

**\$562.50\***: *first half month's rent for March 2010*.

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent," and provides in part:

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

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The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

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In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

Based on the documentary evidence and testimony of the parties, in addition to the various provisions set out above, as the tenant breached the above statutory provisions with regard to ending the tenancy, and as the landlord undertook to mitigate his loss by way of advertising the unit and reducing the rent, I hereby find the landlord has established entitlement to the full amount claimed.

**\$75.00\***: *difference in rent for second half of March 2010*. Based on the documentary evidence and testimony of the parties, in addition to the various provisions set out above, I hereby find the landlord has established entitlement to the full amount claimed.

**\$150.00\***: *difference in rent for April 2010*. Based on the documentary evidence and testimony of the parties, in addition to the various provisions set out above, I hereby find the landlord has established entitlement to the full amount claimed.

**\$191.53\***: *newspaper advertisement*. Based on the documentary evidence and testimony of the parties, I hereby find the landlord has established entitlement to the full amount claimed.

**\$100.00**: *removal of wood floor*. The landlord testified that this work has not presently been undertaken, and that \$100.00 represents an estimate obtained for completing the job. As this cost has not been incurred, I hereby dismiss this aspect of the landlord's application with leave to reapply.

**\$470.24**: *carpet replacement*. The landlord testified that this work has not presently been undertaken, and that \$470.24 represents the estimated cost of replacing the carpet, calculated in consideration of its "useful life." As this cost has not been incurred, I hereby dismiss this aspect of the landlord's application with leave to reapply.

**\$50.00\***: *filing fee*. As the landlord has achieved some success in this application, I hereby find that the landlord is entitled to recover the full amount claimed.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, I hereby dismiss the landlord's application for costs associated with "Registered Letters" and "Cost of registered service (est)."

Expenses claimed by the landlord which are described as "Travel & misc.," appear to be costs incurred, in part at least, as a result of the landlord's decision to own a rental property which is located at a considerable distance from his residence. I consider these expenses to be the cost of doing business and, as such, they are not expenses that are properly the responsibility of the tenants. Accordingly, I hereby dismiss this aspect of the landlord's application.

Following from the above, I find the landlord has established a claim of \$1,129.03. I order that the landlord retain the security deposit of \$475.00 plus interest of \$14.51 (total: \$489.51) and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$639.52 (\$1,129.03 - \$489.51).

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$639.52. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: July 8, 2010

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Dispute Resolution Officer