

## **Decision**

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

### **Introduction**

This hearing dealt with 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent and utilities / compensation for damage to the unit, site or property / retention of the security deposit(s) / and recovery of the filing fee; ii) by the tenants for return of the security deposit(s) / and return of the tenants' personal property.

By way of their testimony and documentary submissions, including the identification of a dollar amount on their application for dispute resolution, I find that the tenants also applied for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement.

As the tenancy has ended, I find that the landlord's application for an order of possession, and the tenants' application to cancel a notice to end tenancy, have both effectively been withdrawn.

The parties consented to all matters in dispute between the landlord and all three tenants being decided by way of this hearing. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the fixed term of tenancy was from April 1, 2009 to March 31, 2010. Thereafter, tenancy was to continue on a month-to-month basis. For the purposes of these proceedings, there are three tenants: "JML," "JCL" and "APM." Tenant "JCL" joined the tenancy as the third tenant effective on or about May 1, 2009. An original tenant ("MW," who is not a party to these proceedings) was replaced by tenant "APM" on or about June 1, 2009. Tenant "JCL's" mother signed the tenancy agreement as a guarantor for her son.

While monthly rent was originally \$1,350.00 for two tenants, rent was raised to \$1,900.00 per month upon the addition of the third tenant. Rent was payable in advance on the first day of each month. During the hearing the parties agreed that each of the three tenants named has, for practical purposes, paid a security deposit in the amount of \$316.67.

Arising from rent and utilities which were unpaid when due on March 1, 2010, the landlord attempted but without success to contact the tenants by way of telephone. Thereafter, the landlord attended the unit and found no one present. At that time the landlord also found that the doors to the unit had not been secured, and that the premises were damaged and in need of extensive cleaning, painting and repairs.

The landlord then issued a 10 day notice to end tenancy dated March 3, 2010. The notice was served on tenant "JCL" by way of registered mail. As the whereabouts of the other tenants were not known, they were not served. A copy of the notice was submitted into evidence. The landlord then secured the unit by changing the locks, and cleared out the tenants' belongings from inside the house. What was deemed garbage was removed from the premises and taken to the dump, while other belongings were left in the carport.

Later on March 3, 2010, the landlord received an e-mail from tenant "APM" in which tenant "APM" queried the whereabouts of some of the tenants' belongings. In a

subsequent e-mail from tenant “APM” to the landlord on March 4, 2010, the tenant stated in part, as follows:

We were hoping to save money from our damage deposit by repairing and painting ourselves. We all found housing in the area and were working on the house when available.

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.....I have no clothes now and like I said yesterday I had VERY expensive clothes I am now missing.

When the landlord returned to the unit following an absence from the province, on March 22, 2010, he noted that some of the belongings left in the carport had been removed. The landlord then himself removed belongings remaining in the carport by donating some to the salvation army and, in the case of a television set, taking it to recycling.

Subsequently, in April 2010 the mother / guarantor of tenant “JCL” made payment to the landlord of \$1,165.18 with respect to what was considered to be tenant “JCL’s” share of “unpaid rent,” as well as “utilities, water and carpet cleaning.”

During the hearing, tenant “JCL” advanced no particular claim on his behalf against the landlord; he acknowledged that effective at the end of February 2010 he had vacated the unit to live with his father and had not provided any notice to the landlord of his intent to vacate the unit. However, tenants “JML” and “APM” testified as to the value of personal items which had allegedly been left in the unit and disposed of by the landlord.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook, but without success, to achieve a resolution.

## **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/)

Set out below are aspects of the claims submitted by the respective parties and my findings around each.

### **Landlord**

**\$1,900.00\***: rent for March 2010. Based on the documentary evidence and the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$25.00\***: fee for late payment of March rent. Based on the documentary evidence which includes a copy of the residential tenancy agreement, and the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$307.83\***: gas utility to February 12, 2010. Based on the documentary evidence which includes a statement from Terasen, and the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$201.68\***: gas utility from February 13 to March 3, 2010. Based on the documentary evidence which includes details of a per diem calculation by the landlord, and the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$309.86\***: hydro utility to February 12, 2010. Based on the documentary evidence which includes a statement from BC Hydro, and the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$99.79\***: hydro utility from February 13 to March 3, 2010. Based on the documentary evidence which includes details of a per diem calculation by the landlord, and the

testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$75.00\***: water utility for March 2010. Based on the documentary evidence and the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$239.40\***: carpet cleaning. Based on the documentary evidence which includes a receipt for payment, and the testimony of the parties, I find that the landlord has established entitlement to the full amount claimed.

**\$610.58\***: repairs / replacement of exterior door. Based on the documentary evidence which includes a receipt for payment, and the testimony of the parties, I find that the landlord has established entitlement for the full amount claimed.

**\$300.00**: removal and transport of belongings to the dump (3 trailer loads x \$100.00 per load). The landlord undertook this work himself, however, in the absence of a breakdown of actual time spent, and a calculation pursuant to an hourly rate, I find that the landlord has established entitlement to **\$150.00\*** which is half the amount claimed.

**\$300.00**: cleaning, painting, related supplies and labour. The landlord undertook this work himself, however, similar to the above findings, in the absence of a breakdown of actual time spent, and a calculation pursuant to an hourly rate, as well as receipts, I find that the landlord has established entitlement to **\$150.00\*** which is half the amount claimed.

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

**Sub-total: \$4,119.14**

The above entitlement is offset by **\$2,115.18** which is comprised of the three combined security deposits in the total amount of \$950.00, plus payment received from tenant

“JCL’s” mother / guarantor in the amount of \$1,165.18. The net entitlement established by the landlord is therefore \$2,003.96 (\$4,119.14 - \$2,115.18).

### Tenants

\$2,508.32: estimated value of personal items disposed of by the landlord, including an estimated value of the security deposit(s) of \$850.00. Tenants making this claim are limited to “JML” and “APM.”

Setting aside the matter of the security deposit(s), which has been credited to the tenants in the above calculations, the estimated net value of items disposed of amounts to \$1,658.32 (\$2,508.32 - \$850.00).

While the tenants have listed items which were allegedly left behind in the unit and disposed of by the landlord, and have assigned a monetary value to each, they have submitted no evidence of receipts proving purchase(s), no evidence of the price for similar items available for sale, no evidence related to the age or condition of the items, and no photographs of any of these items. Photographic evidence of any of the tenants’ belongings is included in the landlord’s evidence, however, it is limited in its value for proving that any of the items listed by the tenants were left behind and / or disposed of. Further, tenants “JML” and “APM” have not differentiated between which possessions belonged to one or the other.

Section 56 of the Act speaks to **Application for order ending tenancy early**, and provides that in certain circumstances a landlord may obtain an order of possession without giving a tenant a notice to end tenancy. When faced with the circumstances he found when he attended the unit at the beginning of March, as described above, there is no evidence that the landlord contemplated making an application for dispute resolution, seeking to obtain an early end of tenancy and an order of possession.

Part 5 of the Residential Tenancy Regulation (sections 24 – 30) speaks broadly to **Abandonment of Personal Property**: in detail, section 24 addresses **Abandonment of personal property** and section 25 sets out **Landlord’s obligations**.

I find there is insufficient evidence that the circumstances found by the landlord were such to justify his conclusion that the tenants “could not reasonably be expected to return to the residential property.”

Further, while the landlord denies disposing of anything listed by the tenants with the exception of possibly the “spider” style lamp, even if he was justified in determining that the unit had been abandoned, the landlord did not proceed to “keep a written inventory of the property” as required by the legislation.

Additionally, while the landlord concluded that “there was no one item of property valued over \$500.00 left on the property,” it is not apparent that he made a determination that “the property has a total market value of less than \$500.00” as addressed in the Regulation, before disposing of items.

Having considered the documentary evidence submitted by all the parties, their respective testimony, and the relevant statutory and common law provisions, I find that the tenants have established entitlement to **\$829.16\*** which is half the amount claimed.

The tenants have not applied to recover the filing fee.

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Offsetting the respective entitlements established by the parties, I find that the landlord has established a net entitlement to **\$1,174.80** (\$2,003.96 - \$829.16).

Residential Tenancy Policy Guideline # 13 addresses “Rights and Responsibilities of Co-tenants,” and provides in part as follows:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Pursuant to the above, despite the fact that tenant "JCL's" mother / guarantor has already paid a sum of money to the landlord, tenant "JCL" remains liable along with tenants "JML" and "APM" for compensation found to be still outstanding to the landlord. As previously noted, the responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,174.80**. 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: August 5, 2010

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Dispute Resolution Officer