

## **Decision**

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

### **Introduction**

This hearing dealt with 2 applications: i) by the landlords for a monetary order as compensation for damage to the unit, site or property / compensation for unpaid rent or utilities / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / return 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 either party is entitled to any of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on or around December 13, 2009. Rent in the amount of \$1,200.00 was payable in advance on the first day of each month. A security deposit of \$600.00 was collected near the outset of tenancy. While the parties undertook a walk-through of the unit, a move-in condition inspection report was not completed.

On April 27, 2010, the tenants gave verbal notice of their intent to end the tenancy effective May 31, 2010. Subsequently, the parties agree that this notice was provided by way of e-mail to the landlord dated May 1, 2010; a copy of this e-mail is not in evidence. The tenants vacated the unit on or around May 21, 2010.

Arising from rent which was unpaid when due on May 1, 2010, the landlords issued a 10 day notice to end tenancy for unpaid rent or utilities dated May 3, 2010. Thereafter, as the landlords determined that the form of the notice was out-of-date, they re-issued a 10 day notice, a copy of which is not in evidence.

As a result of their “major health and safety concerns” about the condition of the unit, the tenants acknowledge that they withheld payment of rent for May 2010. The landlords testified that without advertising the unit, potential new tenants were referred to them by a realtor contact, and new tenants took possession of the unit effective August 1, 2010.

Both parties made applications for miscellaneous compensation arising out of this tenancy which was limited to approximately six months.

### **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 particular aspects of the respective applications and my findings around each are set out below. These findings are based on the documentary evidence and testimony of the parties.

#### **Landlords:**

**\$1,200.00\***: unpaid rent for May 2010 [acknowledged by the landlord to be shown in error on the documentary evidence as “June”]. There is no disagreement between the parties that while the tenants occupied the unit for the better part of May 2010, they did not pay rent for May. Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part as follows:

26(1) 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.

There is no evidence that the tenants applied for dispute resolution, seeking authorization to withhold payment of rent prior to their decision to withhold payment and, thereafter, to vacate the unit. The tenants' application for dispute resolution was filed on August 19, 2010. Based on the documentary evidence and testimony of the parties I find that the landlord has established entitlement to the full amount claimed.

\$274.40: *replace living room blind*. Section 23 of the Act (**Condition inspection: start of tenancy or new pet**) speaks to the requirement that "the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day," and further, that the "landlord must complete a condition inspection report," and both "the landlord and tenant must sign the condition inspection report."

Section 35 of the Act (**Condition inspection: end of tenancy**) speaks to the requirement that the "landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day." Further, this section of the Act provides that the "landlord must complete a condition inspection report," and both the "landlord and tenant must sign the condition inspection report."

In the absence of the comparative results of a move-in and a move-out condition inspection report, this aspect of the application is hereby dismissed.

\$5,512.52: *miscellaneous costs related to the services of a contractor*. Further to the specific statutory provisions set out immediately above, in the absence of the comparative results of a move-in and a move-out condition inspection report, this aspect of the application is hereby dismissed.

\$650.00: *cost of carpet replacement*. The landlord testified that this is a pro-rated cost arising out of a quote, and that as the carpets have not been replaced, no replacement

costs have actually been incurred following the end of this tenancy. Accordingly, this information in combination with the absence of the comparative results of a move-in and move-out condition inspection report, lead to this aspect of the application being hereby dismissed.

\$1,200.00: *loss of rental income for July 2010* [query: should be “June”?]. The landlord testified that the unit was not in a satisfactory condition to rent after the tenants vacated, and that necessary cleaning and repairs precluded him from re-renting the unit effective from the beginning of the month following the end of this tenancy. However, as previously noted, neither a move-in nor a move-out condition inspection report was completed. Further, the tenants vacated the unit on or about May 21, 2010 and the landlord acknowledged that he did not advertise the unit for rent following the end of this tenancy. In summary, there is insufficient evidence that the unit could not have been made suitable for new renters very shortly after the end of this tenancy, and insufficient evidence that extensive cleaning and repairs were required as a direct result of this tenancy (as opposed to normal wear and tear). Accordingly, this aspect of the application is hereby dismissed.

\$50.00: *filing fee*. In view of the limited success achieved in the landlords’ application, I hereby dismiss the application for recovery of the filing fee.

**Sub-total of entitlement: \$1,200.00**

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*Tenants:*

\$228.00: *loss of 1 day’s wages*. The tenants testified that they had to move almost immediately when another unit became available, because of the unsuitable conditions in the unit which is the subject of this dispute. In the result, the tenants claim that as one tenant was required to take a full day off work to move their possessions, he lost 1 day’s worth of wages. However, I find there is insufficient evidence to support this aspect of the claim and it is therefore dismissed.

\$115.00: Terasen Gas transfer fee and deposit difference. In the absence of sufficient evidence to support this aspect of the claim, it is hereby dismissed.

\$100.00: fuel for moving truck. In the absence of sufficient evidence to support this aspect of the claim, it is hereby dismissed.

\$100.00: carpet cleaning. While there is a receipt for this expense included in the evidence, in the absence of the comparative results of a move-in and move-out condition inspection report, or evidence of any agreement between the parties concerning the need for this cleaning at the outset of tenancy, this aspect of the application is hereby dismissed.

\$160.00: painting labour. It appears that the parties entered into a verbal agreement whereby the tenants would undertake some painting in the unit near the start of tenancy. However, the results of that labour were not equally agreeable to both parties. In the absence of sufficient evidence of the nature of the agreement entered into by the parties, this aspect of the application is hereby dismissed.

\$3,960.00: difference for rent at new property for the first year. The tenants testified that monthly rent in their current accommodation is \$1,530.00 (versus \$1,200.00 per month in the subject tenancy). The tenancy which is the subject of this dispute was a month-to-month tenancy. At the conclusion of the tenancy, the tenants moved to another unit and presumably entered into a separate tenancy agreement. Setting aside the reasons described by the parties for the end of the subject tenancy, in view of all the above, I find there is no obligation on the part of the landlord to reimburse the tenants for the difference in monthly rent between the two units. Accordingly, this aspect of the application is hereby dismissed.

\$150.00: difference in damage deposit between subject unit and new unit. For reasons similar to the reasons set out immediately above, I hereby dismiss this aspect of the application.

\$5,400.00: reimbursement of rent for period from December 15, 2009 to April 30, 2010.

The tenants occupied the unit for the full duration of time set out above, the tenants did not apply for authority to reduce rent while the tenancy was in effect, the tenants vacated the unit, and there is no evidence of the comparative results of a move-in and move-out condition inspection report to support any claim that a reduction or reimbursement of rent is justified. Related documentation is limited to correspondence from the tenants' insurance provider confirming the insurance provider's position that it "would not continue to insure their belongings unless the landlord could provide inspection reports showing that electrical, building and environmental were brought to code, following the discovery of a grow op in the home." Accordingly, this aspect of the claim is dismissed.

\$100.00: filing fee. In view of the absence of their success in this application, I hereby dismiss the tenants' application for recovery of the filing fee.

**Sub-total of entitlement: Nil**

The tenants' application is hereby dismissed.

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Following from all of the above, I order the landlords to retain the security deposit of \$600.00, and I find the landlords have established entitlement to the balance owed of \$600.00 (\$1,200.00 - \$600.00).

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$600.00**. 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: September 24, 2010

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Dispute Resolution Officer

