

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, & FF

### Introduction

This hearing dealt with the landlord's application seeking monetary relief due to the tenants' breach of the tenancy agreement, *Act* and regulations. The landlord seeks monetary relief related to damage to the rental unit, loss of rent or utilities and seeks to retain the tenants' security deposit in partial satisfaction of this claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

The landlord had applied to amend this application to increase the amount of the monetary relief being sought; however, the amendment was denied on the grounds that the tenants were not served with notice of the amended application in accordance with section 89 of the *Act*.

In addition, the landlord's evidence was not provided to the tenants or the *Residential Tenancy Branch* in the required time limits and the tenants were not provided adequate opportunity to review and respond to the evidence. The parties proceeded with the hearing on the basis of oral testimony.

### Issues(s) to be Decided

Have the tenants breached the tenancy agreement, *Act*, or regulations entitling the landlord to monetary relief?

### Background and Evidence

This tenancy began on July 1, 2009 for the monthly rent of \$1,650.00 and an \$825.00 security deposit. The tenancy was for a fixed term ending on July 1, 2010. A move in condition inspection report was completed on June 30, 2009.

On March 2, 2010 the tenants gave notice to end the lease effective May 1, 2010. The tenants also told the landlord that they did not have a copy of the original tenancy agreement.

On March 18, 2010 the landlord provided the tenants with a copy of the tenancy agreement and reaffirmed with the tenants their obligation to pay the liquidated damages. The landlord indicated that she would make all attempts to find new tenants to minimize any loss as a result of the tenants ending the tenancy early. The landlord provided the tenants with a form to acknowledge the early end to the tenancy on April 11, 2010. The tenants did not sign this document. The landlord confirmed in the hearing that the liquidated damages clause had been discussed with the tenants at the start of the tenancy.

The landlord also provided the tenants with the utilities owed for March 2010 and indicated that there would be further utilities owed up to the end of the tenancy. The landlord indicated that arrangements would have to be made to pay the outstanding utilities.

The landlord also made arrangements to complete the move out condition inspection with the tenants on May 1, 2010 at 1:00 p.m. On May 1, 2010 the landlord made multiple attempts to reach the tenants during the day to confirm the move out inspection. After the appointed time the landlord entered the rental unit and discovered that the tenants had vacated. The landlord posted a notice for a second opportunity to conduct a move out condition inspection and also e-mailed the tenants about the second date and time on May 2, 2010. The tenants did not appear.

She conducted the move out condition inspection on May 4, 2010. The landlord submitted the following problems in the rental unit:

- Wood pieces stapled to inside of closet;
- Kitchen not properly cleaned, debris left in cupboards;
- Unit not cleaned properly, walls left with damage;
- Tile broken in front of fireplace and smoke damage to the wall;
- Paint in rental unit not returned to neutral colour as agreed to.

The landlord first began to advertise the rental unit on March 22, 2010 and showed the rental unit on multiple occasions; however, the landlord stated that due to this experience she has been wary of prospective tenants and has not rented the unit as of the date of the hearing.

The landlord expressed her surprise and disappointment that the tenants abandoned the rental unit without completing the inspection and without communicating with her. The landlord seeks the following claim in damages due to the tenants' breach of the fixed term tenancy and their failure to return the rental unit in a clean and undamaged state:

Loss of rent for May 2010	\$1,650.00
Outstanding utilities from March 2010: Hydro from Jan. 21 – Mar 19/2010 \$375.06 Utilities Oct 31/09 – Mar 8/2010 \$150.52	\$525.58
Outstanding utilities from April 2010 Hydro Mar 20 – Apr 30/10 \$231.12 Utilities Mar 9 – Apr 30/10 \$73.43	\$304.55
Repair costs due to damage to rental unit	\$300.00
Cost to have the rental unit cleaned	\$400.00
Cost to change the locks as keys on returned	\$85.00
Recovery of filing fee paid for this application	\$50.00
<b>TOTAL</b>	<b>\$3,815.13</b>

From this sum the landlord requests to retain the tenants' security deposit of \$825.00 in partial satisfaction of this claim.

The tenants questioned the landlord's right to both liquidated damages and to potential loss of rental income as a result of their notice to end the tenancy early. From the perspective of the tenants this strained their relationship with the landlord. The tenants acknowledged that the landlord showed the rental unit on a number of occasions; however, they made allegations that the landlord appeared to be sabotaging the process by asking for illegal and excessive application fees.

The tenants claim that they did pay the utilities owed to the landlord in cash. It was not clear whether the tenants paid the second set of utilities owed. The tenants also reject the landlord's claim for the cost of replacing the keys and discussed how one set of keys had been returned to the landlord.

The tenants also believed that the landlord failed to follow through on their agreement with painting the rental unit. The tenants acknowledged that they were to return the paint in the house to the original colours and they did some of the painting; however, the landlord was to provide them with the paint and therefore they could not finish the job.

The tenants also dispute the landlord's claim for costs associated with cleaning the rental unit and with clearing away debris from the yard. The tenants claim that they were previously required to clean appliances and there was debris in the yard at the start of the tenancy.

Finally the tenants stated that they left without their security deposit as it was their belief that this would cover any outstanding utilities, cleaning and repairs required on the rental unit. The tenants stated that they ceased communication with the landlord because of their belief that the landlord was unreasonably requesting both the liquidated damages and potentially future loss of rental income.

The landlord rejects the tenants' complaints and claims. The landlord stated that the tenants loved the rental unit and made no complaints about its condition at the time they moved in or during the tenancy. Also, the landlord offered to clean the appliances brought in and the tenants told the landlord that they would do it. They never approached her since about the time it took or came looking for compensation.

The landlord denied tenants' claim that potential new tenants were sabotaged. The landlord did acknowledge however that this experience has caused the landlord to be very vigilant about prospective occupants and that the unit has not been rented as of yet.

The landlord stated that the tenants have not returned the keys and that the one set of keys given to the landlord was returned well before the end of the tenancy and left on the washer or dryer. The landlord stated that no other keys were provided. Regarding the paint the landlord agreed to pay for half the cost of paint but the tenants did not complete the painting or provide a receipt for the cost of paint.

### Analysis

Based on the testimony of the parties, and on a balance of probabilities, I find as follows:

I grant the landlord's application in part. I find that the landlord has established the loss of rental revenue for the month of May 2010 for the sum of \$1,650.00 and the sum of

\$500.00 for liquidated damages due to the tenants' breach of the fixed term tenancy. I find that the landlord is entitled to retain the tenants' security deposit in satisfaction of costs to clean and repair the rental unit. I also accept that the tenants failed to pay the outstanding utilities owed. I accept that the landlord established a total monetary claim for the sum of \$2,980.13.

Although the landlord's evidence was not served in accordance with the rules of procedure and not reviewed as part of this decision, I do accept the amounts provided by the landlord's verbal testimony. I found the landlord's testimony to be consistent, relevant and detailed. The landlord has demonstrated that she communicated effectively with the tenants and put most transactions with the tenants in writing. The exception seemed to be with the payment of utilities where the landlord did not provide receipts.

Where the oral evidence of the landlord and the tenants conflicts, I prefer the oral testimony of the landlord over that of the tenants. I accept the evidence before me that the tenants left the rental unit without contact with the landlord in an attempt to avoid their obligations. As a result, I reject the tenants' speculations about the veracity of the landlord, such as the allegations that the landlord attempted to sabotage acceptance of potential renters.

However, I find that I cannot accept the landlord's position that the tenants are responsible for loss of rental revenue beyond May 2010. I accept the evidence that the landlord was actively seeking renters for May 2010 and was unsuccessful; however, after this the landlord has acknowledged her reluctance and caution in accepting new tenants due to this experience. As a result, I find that any loss of rental income after May 2010 was a result of the landlord's personal choices and not a result of the tenants' breach of the tenancy agreement.

I accept that the tenants are responsible for liquidated damages pursuant to the tenancy agreement. The tenants agreed to the fixed term contract and to the payment of \$500.00 in liquidated damages if the lease was broken when they signed the tenancy agreement.

With respect to the outstanding utilities owed I find that I can only verify that the utilities owed after the tenants vacated remains outstanding for the sum of \$304.55. The landlord has acknowledged that utilities have been paid in cash previously and in the absence of receipts I find that the landlord cannot demonstrate that the previous utilities were not paid.

I accept the oral testimony of the landlord that the rental unit was not cleaned and has some damage and the keys to the unit were not returned. I accept the landlord's oral testimony over that of the tenants on this issue, because the tenants failed to appear for the move out condition inspection as agreed to. I accept that the landlord honestly and accurately documented the condition of the rental unit at the end of the tenancy. In the absence of verification of the cost to complete the clean up and repairs, I accept the landlord's quotes for the sum of \$785.00 as being reasonable.

Finally, as the landlord has been successful with this application I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenants. I find that the landlord has established a total monetary claim for the sum of \$3,289.55. From this sum I Order that the landlord may retain the tenants' security deposit of \$825.00 and I grant the landlord a monetary Order for the remaining sum of **\$2,464.55**.

### Conclusion

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **\$2,464.55**. This Order must be served on the tenants. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 15, 2010.

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Dispute Resolution Officer