

DECISION

Dispute Codes: **Landlord:** MND, MNSD, and FF
 Tenant: MNSD and FF

Introduction

These applications were brought by both the landlord and the tenant.

The landlord made application on October 7, 2010 seeking a Monetary Order for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of August 31, 2010, the tenant sought return of his security deposit in double and recovery of his filing fee.

Issues to be Decided

The tenant's application requires a decision on whether he is entitled to return of his security deposit in double

The landlord's application requires a decision on whether he is entitled to a Monetary for the damages claimed taking into account whether they are proven, whether they are attributable to the tenant, whether the amounts claimed are proven and reasonable and whether there has been a reasonable effort to mitigate the losses.

Background Evidence and Analysis

This tenancy began on July 1, 2009 when the tenant moved upstairs from the basement suite in which he had resided since November 1, 2008. Rent at the end of the tenancy was \$800 per month and the landlord hold a security deposit of \$300 paid on or about November 1, 2008.

I would note that during this hearing, I found both parties to be candid, forthcoming and courteous.

Tenant's Claim for Security Deposit - \$300 x 2

As it was the simpler matter, I dealt with the tenant's application first. The landlord concurs that he did not return the tenant's security deposit within 15 days of the end of the tenancy or receipt of the tenant's forwarding address and that he did not bring application within that period. The landlord stated that the forwarding address was provided to him via email and he was not certain that constituted proper service.

While the parties disagreed as to whether the tenant initially gave his forwarding address in writing, as the landlord acknowledged that he did, in fact, have the tenant's forwarding address, I find that he had the necessary knowledge to return or make an application to claim on it.

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit to the tenant or make application for dispute resolution to claim upon it. Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), "must pay the tenant double the amount of the security deposit..."

In this matter, I find that the tenant is entitled to return of the deposit in double.

Landlord's claims

The balance of the hearing dealt with the landlord's claim for damage to the carpets in the rental unit. On this question, the tenant concurs that he had two dogs and one unauthorized cat for a period of the tenancy and he acknowledges that one older dog was incontinent with the result of considerable staining of the carpets.

The landlord stated that the carpet was cleaned three times in an effort to minimize the costs, once by professional carpet cleaners, and with rented equipment once by the new tenants and once by himself in apparently futile efforts to remove strong odours.

The landlord stated that the carpets were approximately two and one-half years old and submitted letters from two persons who had been guests in the home in June 2009 when the landlord lived there attesting to the new condition of the carpets at that time. The tenant did not contest that dating.

The landlord also submitted a letter from the new tenant attesting that, because both her children have allergies and one is asthmatic, she had asked the landlord to permit her access to the rent unit early for extra cleaning. When she was cleaning the rental unit, she found the odour of what she believed to be cat urine overwhelming in spite of the two previous cleanings. The carpets were cleaned yet again without success.

A letter from a real estate agent who had listed the home for sale attested to overwhelming odours on which most viewers commented.

Therefore, the landlord states he must replace the living room carpet and submitted an estimate for the work.

Carpet cleaning #1 – Sears \$204.62. The land submitted a receipt for this claim dated August 9, 2010 and it is allowed in full.

Carpet cleaning #2 - \$200.01. This claim is made up of \$38.19 for rental of the carpet cleaner, \$21.82 for cleaning materials and \$140 for the four hours @ \$35 per hour it took the landlord to complete the task. I find the hourly rate claimed by the landlord to be excessive and reduce it to \$20 per hour and thereby reduce the award on this claim to \$140.

Carpet cleaning #3 - \$132.48. This claim is made up of \$53 equipment rental, \$19.48 in chemicals and \$60 for two hours labour at \$30. As the landlord subsequently claims for replacement at least some of the carpeting, I must question the wisdom of the third attempt at cleaning when the first two didn't work. I will allow \$50 on this claim.

Replacement of living room carpet - \$1,597.90. This claim is made up of \$1,537.90 for the cost of carpet replacement and a \$60 measurement fee. As the parties concur that the carpeting was two and one-half years old and as standard depreciation tables place the useful life of carpeting at 10 years, I find that the tenant should be responsible for 75 per cent of this cost. As the work has not yet been done, I cannot factor in whether underlay will need to be replaced or other related costs. Therefore, the landlord is awarded \$1,198.42 on this claim.

Filing fees. Having found merit in both applications, I find that both parties should remain responsible for their own filing fees.

Thus, on balancing accounts, I find that the tenant owes to the landlord an amount calculated as follows:

Award to Landlord		
Carpet cleaning #1	\$ 205.00	
Carpet cleaning #2	140.00	
Carpet cleaning #3	50.00	
To carpet replacement	<u>1,198.42</u>	
Sub total	\$1,593.42	\$1,593.42
Tenant's Credits		
Security deposit	\$300.00	
Interest (November 1, 2008 to date)	.75	
To double security deposit per S. 38(6)	<u>300.00</u>	
Sub total	\$600.75	- 600.75
TOTAL AMOUNT OWED TO LANDLORD		\$ 992.67

Conclusion

In addition to authorization to retain the \$600.75 double security deposit awarded to the tenant which I grant under section 72 of the Act, the landlord's copy of this decision is accompanied by Monetary Order for \$992.67, enforceable through the Provincial Court of British Columbia, for service on the tenant.

October 19, 2010