

## **DECISION**

### **Dispute Codes:**

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

### **Introduction**

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

By application of May 20, 2010, the landlord seeks 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.

By application of May 31, 2010, the tenants seek return of their security deposit in double and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

These applications require a decision on the merits of the claims submitted by both parties.

In the case of the landlord's claims for damages, I must take into account whether damages are proven, whether they are attributable to the tenants, whether the amounts claimed are reasonable and allowed, and whether reasonable measures have been taken to minimize the losses.

In the case of the tenant's, I must determine whether the tenants are entitled to return of the deposit in double based on whether the landlord's application to claim on it was brought within 15 days of the latter of the end of the tenancy or receipt of the tenants forwarding address.

## **Background, Evidence and Analysis**

This tenancy in a new duplex began on February 1, 2009 and ended on April 30, 2010. Rent was \$1,900 per month and the landlord holds a security deposit of \$950 paid on January 11, 2009.

This matter is clouded by the fact that both parties breached the *Act*. First, the tenant states that she gave notice to end the tenancy by telephone call on April 1, 2010. The landlord stated that he received notice on April 7, 2010. In either case, the tenants breached section 45 of the *Act* by failing to give one full month's notice in writing prior to the rent due date in which the tenancy was to end.

The landlord breached the *Act* by failing to arrange and attend a move-out condition inspection report. However, I find that was partly a result of the tenant's late notice.

Fortunately, the landlord was able to mitigate a potential loss of rent by getting new tenants who moved in on May 8, 2010.

In addition, while the landlord attempted to serve the tenants in person with his evidence, including photographs, on September 27, 2010, the tenant refused to admit him to her controlled entry rental building. Therefore, she had some difficulty with the photographic evidence subsequently faxed to her. I find the resultant disadvantage was by choice of the tenant and I accept the landlord's photographs as submitted.

The parties claim and I find as follows:

### **Tenants' claims**

**Return of security deposit in double - \$950 x 2 = \$1,900.** As a general principle, when two parties have breached the *Act* on a related issue, the advantage falls to the party who was the second to breach. I find that the tenants' late notice played a role in the landlord's failure to conduct the move-out condition inspection and the landlord's May 20, 2010 application qualifies to claim on the security deposit. Therefore, the tenants' application for double the amount is dismissed without leave to reapply.

### **Landlord's claims**

**Replace broken toilet seat - \$44.79.** The parties concurred that the seat was broken and this claim is allowed in full.

**Carpet cleaning - \$100.** The landlord stated that when he was able to attend the rental unit on May 3, 2010, the carpet was in need of cleaning which he subsequently did. He submitted an invoice for \$62.62 for rental of a carpet cleaner and claims the balance for labour. The tenant submitted a receipt from a professional cleaning company for \$347.75. While the letterhead states, "we also carpet clean," the emailed receipt does not itemize carpet cleaning which is an added extra. I find that carpet cleaning was not included in the general cleaning and this claim is allowed in full.

**Broken moulding - \$94.50.** The landlord submitted an invoice for replacement of moulding in a child's bedroom. While the tenant has no recollection of this damage, I accept the evidence of the landlord and the claim is allowed in full.

**Refrigerator shelf – \$123.87.** The tenant concurred that the shelf in question was broken and that it was removed from the refrigerator some time during the tenancy, but she believes it to be a result of a manufacturing defect. The fridge was new at the beginning of the tenancy. The tenant concurred that she did not advise the landlord of the problem in writing at the time. Therefore, I find that the landlord was not given time to seek a timely remedy and this cost must be borne by the tenants. The claim is allowed in full.

**Replace stained blinds - \$269.** The landlord conceded that the staining was not heavy and that he has not replaced the blinds to date. This claim is dismissed.

**Marked flooring - \$1,550 to \$1,950.** The landlord submitted photographic evidence of scratches to the hardwood flooring in the rental unit and a narrative estimate discussing the desirability of refinishing which would reduce the useful remain life of the entire floor or partial replacement. The tenant denies any damage beyond normal wear and tear. In view of the fact that the landlord has not had the work done and does not plan to do so during the current tenancy, I cannot ascertain whether or when it will be done. However, I do find that its value has been diminished somewhat beyond normal wear and tear and I award the landlord \$400 for the reduced value.

**Replace marked cupboards - \$375.** The landlord submitted photographs of water damage and/or scratches and surface wear on kitchen cupboards and drawers and an estimate for replacement. The work has not been done and is unlikely to be done during the current tenancy. I will allow \$75 for diminished value or touch up repair.

**Removal of satellite dish - \$300.** The landlord concurs that he agreed to installation of a satellite dish if it were removed at the end of the tenancy. The tenant states there was no such condition placed on the permission. Neither party has enquired of the service provider as to ownership or removal of the dish despite having made application over four months ago. Therefore, I decline to make an award on this claim.

**Garage door opener – \$40.30.** The landlord stated that this item had not been returned to him until weeks after the tenancy ended and he had to purchase a replacement for the new tenants. The tenant said it had been left behind by her husband. I accept the evidence of the landlord and this claim is allowed in full.

**Filing fees - \$50.** As the landlord's application has substantially succeeded, I find that he should recover his filing fee from the tenants and that they should remain responsible for their own filing fee.

**Security deposit – (\$950).** As authorized under section 72(2)(b) of the *Act*, I find that the landlord may retain the security deposit in set off against the balance owed to him.

Thus, I find that accounts balance as follows:

<b>Tenant's Credits</b>		
Security deposit (No interest due)	\$950.00	\$950.00
<b>Award to Landlord</b>		
Replace toilet seat	\$ 44.79	
Carpet cleaning	100.00	
Replace broken moulding	94.50	
Replace refrigerator shelf	123.87	
Compensation for marked flooring	400.00	
Compensation for marked cupboards	75.00	
Replace garage door opener	40.30	
Filing fee	<u>50.00</u>	
Sub total	\$928.46	- 928.46
<b>Balance of security deposit due to tenant</b>		<b>\$ 21.54</b>

## **Conclusion**

I hereby authorize and order that the landlord may retain \$928.46 from the tenant's security deposit and must return \$21.54.

The tenant's copy of this decision is accompanied by a Monetary Order for \$21.54, enforceable through the Provincial Court of British Columbia, for service on the landlord.

October 5, 2010