

## **Decision**

**Dispute Codes:** OPR/OPC, MNR, MND, MNDC, MNSD, SS, PSF, OLC, LRE, FF

### **Introduction**

This hearing dealt with two applications: i) by the landlords for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / and retention of the security deposit; ii) by the tenant for substituted service / provision of services or facilities required by law / an order instructing the landlords to comply with the Act, regulation or tenancy agreement / an order suspending or setting conditions on the landlords' right to enter the rental unit / 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**

Both parties made documentary submissions following the filing of their original applications. Events transpired subsequent to the filing of the two applications, such that the status of the respective applications is currently as follows:

#### **Landlords' application:**

- application for order of possession is withdrawn;
- Monetary order for compensation:

\$400.00: unpaid rent for November 2010

\$1,400.00: loss of rental income for December 2010

\$350.00: kitchen table and chairs

\$250.00: black leather recliner and ottoman

\$250.00: beige leather recliner and ottoman

\$250.00: damage from tenant's pet

Sub-total: \$2,900.00

**Tenant's application:**

- application to recover the filing fee;

During the hearing the tenant stated that she also seeks the return of her security deposit, even while this is not included in her original application. Further, in submissions made after her original filing, the tenant seeks miscellaneous compensation for expenses which include, but are not necessarily limited to, the hook-up and use of certain utilities, U-Haul rental, gas, postal fees, steam cleaning and so on.

Pursuant to a written tenancy agreement, the fixed term of tenancy was from September 1, 2010 to August 31, 2011. Rent in the amount of \$1,400.00 is shown on the agreement as payable in advance on the first day of each month. A security deposit of \$500.00 was collected at the outset of tenancy.

By way of an addendum to the tenancy agreement, the parties agreed that for the two month period from September 1, 2010 to "no later than November 1, 2010," the landlord would occupy the lower level in the house and maintain use of the garage. During this period it was agreed that the tenant's monthly rent would be reduced to \$1,000.00.

Further, in the addendum it was provided that the landlord would use one bedroom in the lower level for storage of personal belongings "for the duration of the Residential Tenancy Agreement or until further notice..."

Subsequently, by letter to the landlord dated September 12, 2010, the tenant described her concern about how the changes to the original agreement were not working out to her satisfaction. Concerns included, but were not necessarily limited to, space taken up by the landlord in a bedroom originally included in space rented by the tenant, and the landlord's decision to stay on in the lower level of the unit for a period of time after the tenant commenced her tenancy.

While there is a little more than one page of typed notations by the landlord of a "Walk-Through Report" conducted on August 26, 2010, there is no move-in condition inspection report in evidence bearing the signatures of both parties.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated November 9, 2010. The amount of rent shown as outstanding is \$1,400.00. The parties agree that \$1,000.00 of this has now been collected by the landlord. While the landlord takes the position that \$400.00 remains overdue, the tenant argues that as the landlord had not thoroughly vacated the unit by the end of October 2010, only \$1,000.00 was due.

As tensions between the two parties escalated, the tenant herself vacated the unit on November 27, 2010. There is no move-out condition inspection report in evidence.

The tenant issued a cheque in favour of the landlord on or about November 11, 2010, for the purchase of certain furnishings in the unit. However, there are conflicting views concerning what particular furnishings were purchased, and which furnishings were to remain with the house. Ultimately, the landlord takes the position that the tenant stole certain furnishings for which the landlord wishes to be compensated, as set out above.

## **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/)

While I have turned my mind to all aspects of the evidence presented, not all particulars of the arguments or submissions are reproduced here.

### LANDLORDS' CLAIM

Based on the documentary evidence and testimony of the parties, I find that the landlord effectively vacated the unit by the end of October 2010. Accordingly, even while the tenant takes the position that the landlord's removal of her possessions was incomplete by that time, I find that the landlord has established entitlement to the balance of rent owed for November in the amount of \$400.00\*.

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and testimony of the parties, I find that the tenant failed to end the tenancy pursuant to the above statutory provisions when she vacated the unit towards the end of November 2010. Arising from this, I find that the landlord has established entitlement to limited compensation for loss of rental income for December 2010.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides in part as follows:

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

There is no evidence before me in relation to, if and when, new tenants were found for the unit, and what, if any efforts were undertaken by the landlord to mitigate the loss of rental income for December 2010 by advertising for new tenants. In the result, I find that the landlord has established entitlement limited to **\$700.00\***, which is half the amount of monthly rent for December 2010.

As to compensation sought for the alleged theft of certain furnishings, as set out above, there is insufficient evidence of a clear and conclusive agreement between the parties concerning what furnishings were included in the purchase transacted between them. Further, there is no evidence to support a particular monetary value for any of the subject furnishings. Accordingly, this aspect of the landlord's claim is hereby dismissed.

In the absence of either a move-in or move-out condition inspection report bearing the signatures of both parties, I find that the landlords have provided insufficient evidence to support their claim for compensation arising from pet damage to the unit. This aspect of the claim is therefore dismissed.

As for the monetary order, I find that the landlords have established a claim of **\$1,100.00\***. This is comprised of unpaid rent for November of \$400.00, and loss of rental income for December of \$700.00. The landlords have not applied to recover the filing fee. I order that the landlords retain the security deposit of \$500.00 and I grant the landlords a monetary order under section 67 of the Act for the balance owed of **\$600.00** (\$1,100.00 - \$500.00).

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**TENANT'S CLAIM**

I find that the tenant has not provided sufficient evidence of any entitlement under the Act, regulation or tenancy agreement for miscellaneous costs which arise, either directly or indirectly, out of her having vacated the unit without proper notice and in advance of the end of the fixed term of tenancy. Accordingly, this aspect of the application is hereby dismissed.

The tenant's security deposit has been offset against the landlords' entitlement to compensation as established above. In the result, the tenant's request to recover the security deposit is hereby dismissed.

As the tenant has not succeeded in this application, her application to recover the filing fee is also hereby dismissed.

### **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 tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 7, 2010

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Dispute Resolution Officer