

## **DECISION**

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

### **Introduction**

This application was brought by the landlords on July 15, 2010 seeking a Monetary Order for unpaid utilities, damage or loss, 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.

As a preliminary matter, the tenant advised that she too had made application for damages on November 26, 2010 and that hearing was scheduled for April 5, 2010. The tenant asked whether the two applications should be heard together.

In view of the fact that the landlords waited four and one-half months for the present hearing and the tenant's application was made less than one week prior to the hearing, I found it would be prejudicial to the landlords to postpone hearing their application another four months because of the tenant's delay in filing. Therefore, the hearing proceeded.

### **Issues to be Decided**

This application requires a decision on whether the landlords are entitled to monetary compensation for the unpaid rent utilities, damages 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.

### **Background, Evidence and Analysis**

This tenancy began on September 1, 2009 under a fixed term rental agreement ending on June 30, 2010 with no provision for renewal or conversion to a month to month tenancy. Rent was \$750 per month and the landlords hold a security deposit of \$375 paid on July 21, 2009. The rental unit is located on a lake.

The tenant was offered two opportunities to participate in a joint move-out condition inspection, the second of which was provided on the prescribed form, but she did not take part.

During the hearing, the landlords submitted the following claims on which I find as follows:

**Cost to refill oil tank - \$1,076.17.** The landlords pointed to the addendum on the rental agreement, initialled by the tenant, which stated that the oil tank was full at the beginning of the tenancy and that the tenant would be responsible for leaving it full at the end of the tenancy. The landlords stated that it had been left empty. For that reason, they made it a requirement that new tenants would be responsible for filling the tank. However, the landlords submitted a statement from their fuel supplier stating the cost of refilling the tank. This claim is allowed in full.

**Cost to refill propane tank - \$141.12.** As with the oil tank, the propane tank was also left empty. The parties gave evidence that the secondary propane heat source had not been operable until October 2009 but that the tenant had used the claimed amount of propane. The tenant argued that propane was not mentioned on the addendum to the rental agreement, but I note that the rental agreement makes the tenant responsible for heat. Therefore, this claim is allowed in full.

**New lock for outside door - \$45.** The tenant concurred that she had not returned the keys and this claim is allowed in full.

**New shower curtain and rings - \$15.** The tenant concurred that she had accidentally removed these items and the claim is allowed.

**New knob for washing machine - \$25.** The tenant concurred that this item was in place at the beginning of the tenancy and the claim is allowed.

**Filing fee - \$50.** Having found that the landlords' application has succeeded on its merits, I find that they should recover the filing fee for this proceeding from the tenant.

**Security deposit – (\$375).** The tenant stated that she had moved out of the rental unit on June 18, 2010 and therefore, the landlords' claim for the security deposit was made beyond the 15 days permitted under section 38(1) of the *Act*. However, I find that June 30, 2010 was the end of tenancy date set by the fixed term agreement, that is the date the tenancy ended and, the landlords' application was on time. In addition, the tenant's right to claim on the security deposit is extinguished under section 24 of the *Act* as a result of her failure to participate in the move-out condition inspection. Therefore, I find that the landlords may retain the deposit in set off against the balance owed to them.

Thus, I find that the tenant owes to the landlords an amount calculated as follows:

To refill oil tank	\$1,076.17
To refill propane tank	141.12
New lock	45.00
Replace shower curtain and rings	15.00
Replace washing machine knob	25.00
Filing fee	<u>50.00</u>
Sub total	\$1,352.29
Less retained security deposit (No interest due)	<u>- 375.00</u>
<b>TOTAL</b>	<b>\$ 977.29</b>

## Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$977.29 for service on the tenant.

December 1, 2010