

## **DECISION**

Dispute Codes        MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the unit, to keep all or part of the security and pet damage deposit, money owed or compensation for damage or loss and recovery of the filing fee. The landlord participated in the conference call hearing but the tenants did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing in person. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issues to be Decided

Is the landlord entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started April 1, 2010 with monthly rent of \$1175.00, the tenants paid a security/pet damage deposit of \$587.50. On September 28, 2010 the tenant vacated the rental unit without providing the landlord proper notice.

The landlord testified that the tenant abandoned the rental unit without giving proper notice. The tenant did not remove his belongings, clean the rental unit or make himself available to meet with the landlord and conduct a move-out inspection. The landlord stated that the rental unit was left in a great state of disrepair, there was extensive damage to the deck, the carpets were stained and dirty and multiple dump runs were required to remove all of the trash left behind by the tenant.

The landlord is claiming the following in compensation for damages and cleaning:

Garbage Dump Fees	\$142.80
Gas	\$62.10
Carpet Cleaner Rental	\$94.25
Sears Carpet Cleaning	\$173.60
Garbage Bags	\$13.41
Labour Costs	\$427.50
Deck Repair	\$2400.00
<b>Total Claim</b>	<b>\$3313.66</b>

## Law

### Residential Tenancy Policy Guideline **37 Rent Increases**

**Table 1: Useful Life of Work Done or Thing Purchased\***

THERMAL AND MOISTURE PROTECTION		
1.	Eavestroughs, Downpipes	20
2.	Waterproofing	
i. Membrane	15	
ii. Sealer	5	

### Residential Tenancy Policy Guideline **5 Duty to Minimize Loss**

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

## Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for damages and cleaning costs.

I do not believe however that the tenant is responsible for the entire cost of the deck repair as not all of the deck membrane is damaged and the landlord may have been able to minimize the cost of the repair by protecting the deck in the areas where there was damage. I must also consider the overall condition and age of the deck membrane which in the photographic evidence does not appear to be new and shows signs of age and the landlord has not submitted any evidence regarding this.

As for the monetary order, I find that the landlord has established a claim for \$2113.66 in damages and cleaning costs.

The landlord is also entitled to recovery of the \$50.00 filing fee.

## Conclusion

I find that the landlord has established a monetary claim for \$2113.66 in damages and cleaning costs. The landlord is also entitled to recovery of the \$50.00 filing fee. I order

the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$587.50 security deposit in partial satisfaction of the claim and I grant the landlord an monetary order under section 67 for the balance due of **\$1576.16** ( $\$2113.66 + \$50.00 = \$2163.66 - \$587.50 = \$1576.16$ )

A monetary order in the amount of **\$1576.16** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 7, 2011

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Dispute Resolution Officer