

## **DECISION**

Dispute Codes            MNDC, OLC, ERP, RP, PSF, SS  
                                 MND, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications from the tenant and landlord. The tenant's application is for a monetary order for compensation for damage or loss, to order the landlord to comply with the Act, make emergency repairs, make repairs, provide services and serve documents or evidence in a different way. The landlord's application is for a monetary order for damage to the unit, unpaid rent or utilities, to keep all or part of the security/pet deposits and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is either party entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started November 28, 2010 with rent of \$850.00, the tenants paid a security deposit of \$420.00. On December 25, 2010 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause: significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; damaged the landlord's property; Residential Tenancy Act only: security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement. On January 2, 2011 the landlord gave the tenant's a 10 Day Notice for Unpaid Rent or Utilities.

On December 20, 2010 the tenants gave the landlord written notice for breach of the tenancy agreement and vacated the rental unit on January 1, 2011.

The landlord testified that on December 5, 2010 the tenants residing in the other ½ of the duplex contacted the landlord as there was no hot water. The landlord attended the rental unit and the following day had a new hot water tank ready for installation. The installation was completed on December 12, 2010 due to the availability of the installers and the tenants next door denying access to complete the repairs.

The landlord stated that on December 9, 2010 the tenants contacted her at 12:00AM regarding an issue with the fridge and the landlord attended the property the following day to see what the issue was. The landlord upon inspecting the fridge found nothing wrong with it and determined that the items in the freezer were still frozen. During this

trip to the property the tenants also advised the landlord that the toilet was leaking and the landlord inspected and took a picture of the toilet for the repair person; the landlord did not observe the toilet leaking. The landlord stated that after this initial complaint from the tenants, the tenants did not contact the landlord again stating that there were repairs required in the rental unit. During this time the landlord reminded the tenants about paying a pet damage deposit as the tenants had a cat and dog, the deposit was not paid.

The landlord testified that the tenants completed a move-in inspection with the landlord and had no issues with the condition of the rental unit. The landlord requested once in writing and twice by phone that the tenant's make them-selves available for a move-out inspection however the tenants did not respond back to the landlord's requests to complete the inspection.

The landlord stated that the tenants damaged the wood flooring on the porch, the drywall in the front entrance, that the tenants did not return the keys resulting in the locks having to be replaced and the yard is covered with dog feces. The landlord stated that the day after the tenants vacated the rental unit, 3 windows in the house were smashed by someone throwing rocks through them.

The landlord stated that the tenants have since filed complaints regarding the property and landlord with Bylaw enforcement and the police.

As the tenants broke the fixed term tenancy and damaged the property, the landlord is requesting compensation in the amount of \$1835.00.

January, February 2011 rent	\$1700.00
Rental ads	\$50.00
Damaged front door	\$50.00
Locks rekeyed	\$15.00
Hydro	\$20.00
<b>Total</b>	<b>\$1835.00</b>

The tenants testified that they had contacted the landlord December 9, 2010 regarding the fridge not working and the landlord came to the unit the next day. The tenants stated that the landlord checked the fridge and also the toilet but that at the time; the landlord believed the fridge to be in working order and there was no evidence of the toilet leaking. The tenants stated that the fridge and toilet continued to be an issue and that they called the landlord on a daily basis however the tenants did not contact the landlord in writing regarding their concerns. The tenants stated that they borrowed a mini-fridge from a relative to use for the remainder of their tenancy.

The tenants stated that the wall in the bedroom leaked when it rained resulting in their mattress getting wet and that the decking on the porch was rotten resulting in the

tenant's foot going through the wood. The tenants testified that the landlord initially said she would have the porch deck fixed but then later stated that she would drop off wood and the tenants could do the repairs themselves. The tenants evidence reflects that the landlord removed the washer and dryer from the unit however the tenancy agreement clearly notes that laundry facilities are not included.

The tenants are seeking compensation for spoiled food, eating out, gas, cell phone time, photocopying and the return of December's rent and the security deposit in the amount of \$1400.00.

December rent	\$850.00
Security deposit	\$425.00
Food, phone, copying	\$125.00
<b>Total</b>	<b>\$1400.00</b>

### Law

Residential Tenancy Policy Guideline # 5 speaks to the **“Duty to Minimize Loss,” and provides in part as follows:**

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Residential Tenancy Act **Section 32 Landlord and tenant obligations to repair and maintain**

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Residential Tenancy Act **Section 45 Tenant's notice**

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

### Analysis

The tenants have applied for a monetary order in the amount of \$1400.00 however I am not satisfied that the tenant's have met the burden of proving that the landlord breached a material term of the tenancy agreement and that the tenants are entitled to compensation. As a result, the tenants did not provide proper notice to the landlord prior to vacating the fixed term tenancy. Therefore the tenant's application is dismissed without leave to reapply. The tenant's are not entitled to recovery of the filing fee.

Based on the documentary evidence and testimony I find that the tenants were properly served with a notice to end tenancy for non-payment of rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice. Based on the above facts I find that the landlord is entitled to a monetary order for unpaid rent.

I find that the landlord has established a claim for \$1720.00 in unpaid rent and utilities.

In regards to the landlord's monetary claim for damages, I am satisfied that the landlord has met the burden of proving this claim and the landlord is entitled to a monetary order for damages. However I do not find that the tenants are responsible for the damage to the porch deck as the photographic evidence clearly shows that the wood on the porch deck is very weathered and rotten.

I find that the landlord has established a claim for \$115.00 in damages.

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 \$1835.00. 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 \$420.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1465.00** ( $\$1835.00 + \$50.00 = \$1885.00 - \$420.00 = \$1465.00$ )

A monetary order in the amount of **\$1465.00** has been issued to the landlord and a copy of it must be served on the tenants. If the amount is not paid by the tenants, 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 18, 2011

---

Residential Tenancy Branch