

DECISION

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

Introduction

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

By application received October 21, 2010, the landlords seek a Monetary Order for unpaid rent, 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.

By application received on January 2, 2011, the tenants seek a Monetary Order for loss or damage under the legislation or rental agreement and recovery of the filing fee for this proceeding.

Issues to be Decided

The landlords' application requires a decision on whether they have established that rent is owing; and whether damages are proven, were caused by the tenants, compensation claimed is reasonable or proven. The security deposit was dealt with in a previous hearing and is not available for set off.

The tenants' application requires a decision on whether the damage or loss claimed is proven, whether the landlords are responsible for the loss and whether the tenants have acted reasonably to minimize the claimed loss

Background, Evidence and Analysis

This tenancy began on June 15, 2008 and ended on June 15, 2010. Rent was \$1,100 per month and the landlord held a security deposit of \$640.

This tenancy was the subject of a hearing on September 30, 2010 on the tenants' application. In a decision issued on the same date, the Dispute Resolution Officer awarded the tenants \$934.46 comprised of double the contested portion of the security deposit (\$340 x 2) plus interest plus \$250 for loss of quiet enjoyment. The Monetary Order has not yet been paid.

I must note that conduct of this hearing was made challenging by the directly contradictory testimony of the parties, poor telephone reception from the tenants, and constant interruptions by the tenants.

Tenant's Application

At the commencement of the hearing, the tenants' withdrew their application which had been based on a claim for a non-functioning car left on the rental property at the end of the tenancy.

Landlords' Application

The landlord submitted claims for damage to the rental unit and damage or loss under the legislation or rental agreement on which I find as follows:

Cost of Painting - \$1,160. The landlord gave evidence that the tenants had left the rental unit with the walls having been primed, with electrical outlets painted over, holes not patched and evidence that they had not been properly cleaned before painting. The tenants concurred that they had primed the walls but had made claim of an earlier agreement regarding painting found unproven at the previous hearing.

Given the contradictory testimony, I have relied on third party written submissions provided by the landlord.

In the first, a written submission from the real estate firm that had listed the property when it was purchased by the landlord in June 2008 states that a feedback questionnaire from an agent which reported no items that needed cleaning or repair before the property was sold. The landlord stated that it appeared to have been freshly painted when he took possession and rented it.

He stated that he had allowed the new tenant who moved in July 1, 2010, a professional painter, to repaint the unit and provided an invoice from that tenant for \$590 for paint and supplies and \$560 for 56 hours labour at \$10 per hour.

I find that the tenants are responsible – except for reasonable wear and tear – for returning possession of the rental unit to the landlord as they found it and that the evidence is firm that they did not do so. As standard depreciation tables set the useful life of interior paint a four years, and as I am accepting that the paint was in new condition at the beginning the tenancy, I find that the tenants are responsible for half the cost of the painting which is \$580.

Repair patches of stained carpets - \$126. Again, I rely on the written submission of the real estate firm that noted that the carpeting was newer and bore no stains. In addition, a written submission from the tenants who moved in on July 1, 2010, states that there are stains on the living room and dining room carpets that would not come out in spite of professional cleaning. That, in combination with photographic evidence submitted by the landlord persuades me that the subject tenants are responsible for the staining. While the landlord requested \$126 on this claim, I note that the receipt for replacement of the stained pieces and the figure stated on the addendum to his application is \$224 and he apparently confused it with the \$126 carpet cleaning receipt. I find that the landlord was understandably confused by the badgering of the tenants and that the higher figure is the correct one. I allow \$224 on this claim.

Other items. The landlord elected not to proceed with other claims of \$126 for the attempt to clean the carpet, \$75 for removal of the derelict car and scrap metal, \$425 for general repairs, and \$600 for loss of rent due to improper notice. The landlord stated that he simply wished to put the unpleasantness behind him.

Filing Fee \$50. As the landlords' application has succeeded on its merits, I find they are entitled to recover the filing fee for this proceeding from the tenants.

Thus, I find that accounts balance as follows:

Tenants' credit		
Award from Hearing on September 30, 2010	\$934.46	\$934.46
Award to landlords		
For one-half cost of repainting	\$580.00	
For patching of stained carpets	224.00	
Filing fee	<u>50.00</u>	
Award to landlord	\$854.00	- 854.00
BALANCE DUE TO TENANTS		\$ 80.46

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$854.00** for service on the tenants.

As the tenants currently hold a Monetary Order for \$934.46 against the landlords, I find that both Orders will have been satisfied by the landlords' payment to the tenants of \$80.46.

January 27, 2011