

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the unit, to keep the security or pet damage deposit, for compensation for damage or loss under the Act, and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and for what amount?

### Background and Evidence

The rental unit consists of a lower unit in a single family home located in Summerland. Pursuant to a written agreement, the month to month tenancy started on January 1<sup>st</sup>, 2009 and ended on August 31<sup>st</sup>, 2010. The monthly rent of \$650.00 was payable on the first of each month. The tenant paid a security deposit of \$325.00, and a pet damage deposit of \$100.00. Inspection condition reports were completed at the start and the end of the tenancy.

The landlord testified that the unit was in new condition at the start of the tenancy. He stated that at the end of the tenancy, the tenants agreed to leave the landlord with their security and pet damage deposits, and told the landlord that they had no more money for the additional damages. The landlord submitted a monetary claim as follows:

- Carpet replacement and repairs:	\$ 454.30
- New curtains:	\$ 20.00
- Window screen replacement and repair:	\$ 230.00
- Ceramic tile repair:	\$ 75.00
- Paint:	\$ 181.53
- Interior repairs and paint:	\$ 450.00
- Replace storage shed:	\$ 300.00
- Dump fees:	\$ 58.55
- Compensation to new tenants:	\$ 68.04
- Total owing:	\$1837.42

In his written submissions, the landlord included 30 photographs showing in part the condition of the suite and damages to the carpets, to the wood trim and windows caused by the tenants' cats, to the storage shed, and the amount of garbage left behind.

The tenants testified that their cats did cause damage to the suite, and acknowledged that minor repairs were required. They stated that they cleaned the suite, but that they also did not have time to fix the holes in the walls. Regarding the landlord's claim, the tenants testified as follows:

- The carpets could have been repaired instead of replaced.
- They agreed to the damaged curtains.
- They agreed to the damaged window screen, but could not speak to other damage such as scratch marks on the sills.
- The tile was already damaged when they moved in.
- The amount of paint that was purchased exceeded what was required for their share of the required amount.
- The labour costs exceeded what was required to only repair what they damaged.
- They did not know how the storage shed was damaged.

- They believed a neighbour was going to dump their couch on time.
- They cleaned the unit and any dirt or stain left would have been an oversight.

The landlord said that the carpets were two years old when the tenancy started. He stated that he made the trip to the landfill on September 1<sup>st</sup> because the tenants' friend did not come earlier to dispose of the couch and new tenants were moving in on that day. The landlord stated that the suite was not ready by September 1<sup>st</sup>, and paid the new tenants' \$68.04 (the outstanding utility bill) as compensation for late occupancy.

### Analysis

Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

The tenants testified that they left a certain amount of damage, but disagree with the landlord on the extent of the said damages, and I am left with each party's version of what or how the unit ought to have been repaired. The condition report the tenants signed at the start of the tenancy indicates that the unit had no deficiencies or damages. The photographs provide evidence of the damages at the end of the tenancy.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The *Residential Policy Guidelines* provide an estimated useful life for various items in rental accommodations to account for reasonable wear and tear. In the case of carpets, that useful life is ten years.

Having reviewed the evidence and the above noted statutory provisions, I have considered what the tenants ought to have repaired and completed by the end of the tenancy. I have also considered reasonable wear and tear rather than the landlord's submission that the claim was based on bringing the unit back to its condition at the start of the tenancy, and reached the following decision:

Regarding the carpets, I am satisfied that the damages caused by the tenants' cats were beyond reasonable wear and tear and as such the carpets' useful life was reduced. Since they were approximately three to four years old by the end of the tenancy, the carpets could have been used for at least another six to seven years. Based on their condition at the end of the tenancy, even if they had been repaired instead of being replaced, I find that the carpets would not have lasted as normally expected. I award the landlord a loss of that usage in the amount of \$250.00.

The tenants accepted responsibility for the curtains and I award the landlord the full amount of \$20.00.

Concerning the window screen and associated repairs: I find it reasonable that where cats damage a window screen, they would inherently cause collateral damage to the immediate vicinity, as evidenced by the photographs. I award the landlord \$230.00 as claimed.

Concerning the broken tile, the tenants stated it was already broken. This is not supported by the move-in condition report and I award the landlord \$75.00 as claimed.

Regarding materials required to paint and repair the unit, I am unable to determine how much of that cost can be solely attributed to damages. I note however that based on the evidence the materials mostly consisted of paint and wood filler. I award the landlord \$75.00.

Turning to the labour costs, the tenant agreed that repairs would have taken at least five hours. Given the tenants' admission of not repairing the walls and of some cleaning oversights, I award the landlord \$225.00 for their labour.

Concerning the storage shed, the tenants deny damaging the shed. I am however satisfied by the evidence that the damage occurred during the tenancy.

After considering the location of the damage, on a balance of probabilities I am satisfied that the damage was caused by the tenants. Since the condition report did not include the shed, in the absence of a receipt I award the landlord \$150.00.

The landlord claimed \$58.55 in dumping fees. The tenants confirmed that a couch was left behind and was supposed to be disposed of by a friend. The couch had not been removed by the time the new tenancy started and I award the landlord that claim.

Lastly, regarding compensation for new tenants; whether or not the landlord could have completed the repairs on time, the amount claimed corresponds to an outstanding utility bill. I find that invoice to be the responsibility of the departing tenants and I award the landlord that claim.

Since the landlord was partially successful, I grant the landlord partial recovery of the filing fee for the sum of \$25.00.

### Conclusion

The landlord has established a claim of \$1176.59 inclusive of the filing fees for this application. Upon mutual agreement, the landlord retained the security and pet damage deposits for the sum of \$425.00. Pursuant to Section 67 of the Act, I award the landlord a monetary order for the balance of \$751.59. This Order may be registered in the Small Claims Court 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 26, 2011.

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Residential Tenancy Branch