

DECISION

Dispute Codes: **Landlord:** MNSD and FF
 Tenant: MNSD and FF

Introduction

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

By application of November 18, 2010, the landlord seeks authorization to retain the security deposit in set off against damages claimed to be greater than the deposit.

By application of February 23, 2011, the tenants seek return of the same deposit with interest.

Both parties have requested recovery of their filing fee from the other.

Issues to be Decided

Both applications require a decision on whether the landlord's claims are sufficiently proven to warrant authorization for her to retain all or a portion of the deposit taking into account whether damages are proven, attributable to the tenants, proven and/or reasonable as to amounts claimed and whether the claimant acted reasonably to minimize the costs.

Background, Evidence and Analysis

This tenancy began on November 1, 2003 and under a renewed fixed term agreement was set to end on October 31, 2010 with the option to continue on a month to month basis. The tenancy did end on October 31, 2010 pursuant to a Notice to End Tenancy for landlord use dated August 26, 2010.

Rent was \$1,450 per month at the end of the tenancy and the landlord holds a security deposit of \$650 paid on October 10, 2003.

During the hearing, the landlord referred to numerous expenditures she had made to remediate the rental unit for her own occupancy, but, taking into account the length of

the tenancy, normal wear and tear and the age of the rental building, submits only the following claims:

Patching and wall preparation for painting - \$285.60. The landlord stated that there had been 291 holes in the wall for wall hangings and pictures, etc. The tenant stated, and the landlord's photographs verified that the tenant had patched and sanded the holes but had not primed. The tenant also stated that a number of the holes predated this tenancy. The parties understood that the painting prior to the tenancy had fully depreciated.

Residential Policy Guideline 1-4 instructs that "if the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes."

The guideline states that tenant must pay if the holes are excessively large in size or number.

While 291 holes does seem somewhat above the norm, I must take into account the fact that there was no move-in condition inspection report, the fact that the tenant did the filling, that there was no expressed prohibition on the method of picture hanging, etc. Therefore, this claim is dismissed.

Hauling and dumping - \$120. The tenant originally agreed to pay \$100 of this claim, and during the hearing acquiesced to the full amount. The claim is allowed.

Carpet cleaning - \$280. The landlord submitted photographs, a receipt and a statement from a carpet cleaning service provider which she said was provided after the work was done and which cited soiling and staining on the carpets necessitating steam cleaning. The tenant gave evidence that he had rented a carpet cleaner for four hours and had left the carpets as they had been found. The landlord's evidence and the written submission of the service provider indicated some stains from cat urine which was contested by the tenant, although he did conceded to having spill chocolate milk in one area. On the balance of probabilities, I find that the tenant is responsible for this cost in full.

Repair to electrical outlet - \$89.60. The landlord submitted a receipt a photograph showing that one of the electrical plugs was broken with half of the plastic on one

receptacle missing and apparent burn marks. The tenant stated he had no knowledge of the plug and that particular outlet had not been used during the tenancy. In the absence of a move-in condition inspection, I find that the landlord has not met the burden of proof and I grant the benefit of the doubt to the tenants. The claim is dismissed.

Light bulb replacement - \$7.79. - While the parties initially disagreed as to the number of bulbs needing replacement, the tenant conceded on this claim.

Filing fees - \$50. I find that each of the parties will remain responsible for their own filing fee.

Security deposit – **(\$650 + \$23 interest).** I find that the security deposit with interest is available for claim by the landlord.

Thus, I find that accounts balance as follows:

Tenants Credits		
Security deposit	\$650.00	
Interest (October 10, 2003 to date)	<u>23.00</u>	
Sub total	\$673.00	\$673.00
Award to Landlord		
Carpet cleaning	280.00	
Hauling and dumping	120.00	
Light bulbs	<u>7.79</u>	
Sub total	\$407.79	- 407.79
TOTAL Balance of deposit to be returned to tenants		\$265.21

Conclusion

I AUTHORIZE AND ORDER that the landlord may retain \$407.79 of the tenants' security deposit and must return the balance of \$265.21.

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$265.21.

March 25, 2011