

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD and FF

### **Introduction**

This application was brought by the landlord on October 29, 2010 seeking a Monetary Order for loss of rent, damage to the rental unit and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for the claims submitted taking into account whether damages are proven, attributable to the tenant, reasonable as to amount sought and whether the landlord has taken reasonable measures to minimize the loss.

### **Background, Evidence and Analysis**

While the tenant has lived in the rental unit much longer, the material rental agreement began on December 1, 2009 after the present landlord had purchased the property with a possession date of April 1, 2009. Rent was \$725 per month and the security deposit, carried forward from the original agreement was \$291.89 and it was, relinquished voluntarily by the tenant in his notice to end the tenancy.

The rental agreement was for a fixed term set to end on December 1, 2010, but the tenant gave notice on or about October 1, 2010 and vacated the rental unit approximately two weeks later.

The landlord noted that on an inspection of the rental unit shortly before the tenancy ended, she was displeased to find a quantity of marijuana in the bathroom. The tenant stated the plants had not been grown there, but had simply been hung to dry.

While the landlord requested recovery of the cost of engaging an agent to find a new tenant, I dismissed that claim on the grounds that the end of the tenancy was imminent and it was a cost that would have been incurred shortly in any event.

The landlord also gave evidence that it had taken a full week to clean the rental unit at the end of the tenancy but that she had made no claim for that labour.

The landlord submitted numerous photographs and receipts in support of the following claims on which I find as follows:

**Loss of rent for November 2010 - \$725.** As the tenant breached the fixed term agreement and as the landlord was unable to find a new tenant for November, I find that he is responsible for the landlord's loss of rent for the month and allow this claim in full.

**Carpet cleaning - \$140.** This claim is allowed in full.

**Miscellaneous replacement and repair materials - \$480.72.** The landlord submitted five receipts for miscellaneous items purchases to repair or replace items damaged beyond normal wear and tear including a new toilet seat, plug covers, light fixtures, etc. Having examined the receipts against photographic evidence and testimony from both parties, I find that these claims should be allowed in full.

**Replacement of dishwasher, fridge and stove - \$1,326.98.** The landlord makes claim for these items on the grounds that the appliances had been abused beyond repair and not fit for new tenants. For example, she stated that the dishwasher door appeared to have been kicked in and replacement of the door would approximate the \$228 replacement cost. She stated that both the stove and fridge were beyond cleaning and repair. Neither party was certain of the age of the appliances but on the balance of probabilities indicated by their evidence, they were approximately eight years old. Standard depreciation tables place the useful life of a dishwasher at 10 years. Therefore, I will allow the landlord 20 percent of the \$228 replacement cost which is \$45.60.

The same tables place the useful life of the fridge and stove at fifteen years. Therefore, I will allow the landlord 7/15 of their cost of \$1098.98 which equals \$512.86. The award for replacement of all three appliances totals \$558.46.

**Carpet replacement - \$2,614.92.** The landlord gave evidence that she has not yet replaced the carpets but that they had been ruined by burns throughout. She submitted an estimate for their replacement which she stated was the lowest she was able to find. Taking into account some debate on the matter between the parties, I accept the evidence of the landlord that they were approximately five years old, half their useful life under standard depreciation tables. Taking that into account and given that the rental unit has a new tenant and the carpets have not been replaced, I find that I cannot make an award for cost of replacement. However, I find that the conduct of the tenant in burning the carpets has diminished their value and I allow \$600 on this part of the claim.

**Filing fee - \$100.** Having found that the landlord's application has succeeded on its merits, I find that she should recover the filing fee for this proceeding from the tenant.

**Security deposit – (\$291.89).** The tenant has voluntarily relinquished the security deposit and this amount is deducted from the total.

Thus, I find that the tenant owes to the landlord and amount calculated as follows:

Loss of rent for November 2010	\$ 750.00
Carpet cleaning	140.00
Miscellaneous replacement and repair materials	480.72
Replacement of dishwasher, fridge and stove	558.46
Carpet replacement – diminished value	600.00
Filing fee	100.00
Sub total	\$2,629.18
Less retained security deposit (no interest due)	- 291.89
<b>TOTAL</b>	<b>\$2,337.29</b>

## **Conclusion**

After taking into account the security deposit retained by the landlord with the tenant's consent, the landlord's copy of this decision is accompanied by a Monetary Order for, **\$2,337.29** enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 3, 2011