

## **DECISION**

**Dispute Codes:** MND, MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlord on November 12, 2010 seeking a Monetary Order for 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. In addition, I have amended the application to include a claim for damage or loss under the legislation or rental agreement to accommodate the landlord's claim for per diem rent on the claim of the tenants over holding.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order based on whether damages are proven, attributable to the tenant, the monetary claim is proven and reasonable and whether the landlord acted reasonably to minimize the losses.

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

This tenancy began on June 15, 2003 and ended on September 30, 2010 under notice given by the landlord. Rent was \$3,575 per month and the landlord holds a security deposit of \$1,550 paid on June 15, 2003.

As a matter of note, this tenancy was the subject of a hearing on October 21, 2010 on the tenant's application for the equivalent of one month's rent under section 51 of the *Act* and diminishment of the value of the tenancy due to needed repairs to balconies.

The landlord had unsuccessfully challenged jurisdiction on the claim that it was a commercial tenancy. The Dispute Resolution Officer found the tenancy was captured by the *Residential Tenancy Act* and that the landlord's commercial style notice was of no effect. Therefore, there was no effective notice for landlord use under section 49 of the *Act*, the tenants therefore left the tenancy voluntarily and had no consequential claim to the free month's rent. The tenants were awarded \$250 on the balcony issue.

In the present matter, the landlord submitted four claims on which I find as follows:

**Damage to hardwood (laminated) floor - \$200.** The landlord submitted a photograph of small abrasion on the hardwood flooring and gave evidence that, using company staff to make the repair, the cost was \$200. The tenant stated he had no knowledge of such a mark on the floor. Given the disagreement between the parties, and in the absence of move-in/move-out condition inspection reports for comparison purposes, I cannot confidently attribute the claimed damage to the tenants. This claim is dismissed.

**Clean and repair damage to the vinyl deck floor - \$50.** On the basis of photographic evidence showing the use of a BBQ and severe marking of the deck, I find on the balance of probabilities that the need for cleaning and repairs are attributable to the tenants. This claim is allowed in full.

**Replacement Blinds - \$600.** In the absence of proof to the contrary, I accept the evidence of the tenant that there were no blinds in the rental units at the beginning of the tenancy. I find the tenants were entitled to remove the high quality blinds they installed after the landlord did not accept their offer to sell them to him at half price. This claim is dismissed.

**Keys returned to the office five days late - \$561.61.** This claim is based on the per diem rent for five days rent because the tenants did not return the keys until October 5, 2011. The tenant gave evidence that he intended to return the keys when the landlord came to do the move-out condition inspection report on September 30, 2010. The parties concurred that the landlord had instead scheduled October 12, 2010 for the inspection. The landlord stated that as the keys had not been returned, he did not feel he had the right to take possession of the rental unit.

I find that the landlord knew that the unit had been vacated on September 30, 2010 in compliance with notice, albeit improper notice, served by the landlord. I further find that by scheduling an inspection for October 12, 2010, the landlord had not anticipated new tenants would be occupying the rental unit and therefore, I cannot find that the landlord suffered loss by the delay in return of the keys. I further find that, if necessary, it was available to the landlord to engage a locksmith to re-key the unit and minimize the loss as is required by a party making a claim under section 7 of the Act. This claim is dismissed.

**Recovery of the filing fee - \$50.** As the landlord had succeeded only marginally in the application, I find that he may recover half of the filing fee for this proceeding from the tenants.

**Claims on security deposit.** I find that the landlord may retain the amount found owing to him in this decision from the tenants' security deposit.

Thus, I find that accounts balance as follows:

<b>Tenants' Credits</b>		
Security deposit	\$1,550.00	
Interest (June 15, 2003 to date)	<u>54.90</u>	
Sub total	\$1,604.90	\$1,604.90
<b>Award to Landlord</b>		
Clean, repair vinyl deck	\$ 50.00	
Recover one-half of filing fee	<u>25.00</u>	
Sub total	\$75.00	- 75.00
<b>TOTAL remainder of deposit to be returned to tenants</b>		<b>\$1,529.90</b>

## Conclusion

The tenants copy of this decision is accompanied by a Monetary Order for **\$1,529.90** enforceable through the Provincial Court of British Columbia for service on the landlord.

March 18, 2011