DECISION

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

Introduction

This application was brought by the landlord on October 29, 2010 seeking authorization to retain a portion of the tenants' security deposit in set off against unpaid utilities, plumbing repairs to the rental unit, one late fee and recovery of the filing fee for this proceeding.

Issues to be Decided

This matter requires a decision on whether the landlord is entitled to monetary compensation for the damage and losses claimed taking into account whether they are proven, attributable to the tenants, reasonable and proven as to amounts claimed and whether the landlord has acted reasonably to minimize the losses.

Background, Evidence and Analysis

This tenancy began on July 1, 2010 and ended on September 30, 2010. Rent was $1,250 per month and the landlord holds a security deposit of $625 and a pet damage deposit of $200 both paid on or about July 1, 2010.

During the hearing, the landlord articulated the following claims on which, taking into account the tenants responses, I find as follows:

Unpaid utilities - $320. The tenant concurred that she had paid only $10 toward the $330 claimed by the landlord for gas and hydro billings for the three month tenancy. However, she stated that she had not paid the balance because the claim is based on equalized monthly payments and consumption during the material summer period of the tenancy was a small percentage of the amount claimed.

The rental agreement states that “monthly rent is $1,250....plus utilities ...gas and hydro, to be due and payable on or before the first day of the month.”

Section 12(1) of the *Regulations* under the *Residential Tenancy Act* states that: “A landlord must ensure that a tenancy agreement is (d) written so as to be easily read and understood by a reasonable person.”

I find that the wording with respect to the utilities payments in the rental agreement is ambiguous and that it would be reasonable for the tenants to assume that they were agreeing to pay only their share of utilities that were actually used as opposed to equalized payments.

I find the tenants’ submitted calculation of the amount owing for the three months of use of $72.39 to be reasonably accurate and I award that amount. As to hydro use, I find the $85 equal billing to be approximately the same as actual usage and award one half of this amount for the three months claim (3 x $85/2 = $127.50. The gas and hydro award together equal $199.89 less the $10 already paid by the tenants. Therefore, I award $189.89 on the claim for unpaid utilities.

Unpaid plumbing bills - $146.70. This claim is based on the cost of renting a snake on September 9th at $11.20 and again on September 22nd at $22.40 for two days plus a plumber’s bill dated October 5, 2010 for the balance, all in aid of unplugging the toilet in the main bathroom of the rental unit. The landlord submitted a photograph and the plumber’s invoice described the blockage as having resulted from the plastic applicator from a feminine hygiene product.

The tenant stated that she had first noticed problems with toilets with both the ensuite and main bathroom toilets flushing in about the third week of the tenancy. She stated that she and her spouse had attempted to resolve the matter through using a plunger and drain solvent products when the landlord had not returned their calls about the problem.

She said the efforts had appeared to be successful but the problem returned. The landlord said he did not recall the messages from the tenants. The tenant stated her family was away for much of August, but when they returned and the problem persisted

in September, they contacted the landlord who authorized the snake rental at his expense.
The tenant stated that because her mother had been a landlord for many years, she had been well schooled in care of bathroom fixtures and neither she nor her daughter knew better than to attempt to flush a non-soluble material.

This is an extremely difficult situation in which to ascribe responsibility. It is entirely possible that the item in question was in the toilet trap when the tenants moved in and only began to cause problems when it eventually moved into a position where it restricted the drainage flow. It is similarly possible that the tenant or a guest may have caused the problem in error.

I note that plugged fixtures are included in the items listed under section 33 of the Act as qualifying as emergency repairs. The wisest course of action would have been for the tenants to advise the landlord twice as required under section 33 and if he did not attend to the matter immediately, they would have been justified to call a plumber themselves seek compensation from the landlord.

I am persuaded by the tenant's statement that her family quit using the main bathroom when they were concerned that it might overflow, cause damage and intrude on the suite below that she and her family had the foresight to take precautions in consideration of the landlord's property and the tenant's below.

The burden of proof lies with the party making a claim. In this matter, I find that there is strong doubt as to who caused the blockage and when. Therefore, I find that the benefit of doubt must favour the tenants. Therefore, this claim is dismissed.

Late fee - $25. The landlord claims this fee on the grounds that the August rent was one day late. The tenant stated that she had gone to the bank to withdraw her rent after hours and had forgotten that her debit card had a maximum of $800. She gave that amount to the landlord on August 1st, and explained to the landlord she would pay the balance the following day.

She stated that the landlord had told her that would be fine and that she heard no more about the matter until after the tenancy had ended. I find that if the landlord had wanted to claim the late fee, he should have done so on August 1st or 2nd. This claim is dismissed.

Mailing fee - $8.92. Hearing and evidence preparation cannot be claimed. Dismissed.

Filing fee - $50. As the application has only partly succeeded on its merits, I find that the landlord may recover one-half of the filing fee from the tenants.

Thus, I find the amount the landlord may retain from the deposits, and the amount the landlord must return to the tenants, calculated as follows:

Tenant's Credits		
Security deposit	$650.00	
Pet damage deposit	200.00	
Sub total	$850.00	$850.00
Award to Landlord		
Unpaid utilities	$189.89	
One-half of filing fee	25.00	
Sub total (award to landlord)	$214.89	- 214.89
TOTAL (Amount to return to tenants)		**$635.11**

Conclusion

As authorized under section 72(2)(b) of the *Act*, I hereby order that the landlord may retain $214.89 of the tenants security and pet damage deposits and must return $635.11.

The tenants' copy of this decision is accompanied by a Monetary Order for $634.11 enforceable through the Provincial Court of British Columbia, for service on the landlord.

March 2, 2011