

## **Decision**

**Dispute Codes:** MNR, MND, MNDC, FF

### **Introduction**

This hearing dealt with an application by the landlords for a monetary order as compensation for unpaid rent / compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated or were represented in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlords are entitled to any or all of the above under the Act

### **Background and Evidence**

There is no written tenancy agreement in evidence for the tenancy which began several days before April 1, 2009. Monthly rent was \$650.00, and a security deposit was not collected. A move-in condition inspection report was not completed.

A fire took place in the unit on April 27, 2009, however, the landlord testified that the tenant continued to reside in the unit until sometime late in July 2009. The landlord also testified that as the rental unit is located within only feet of his own residence, he was in a position to clearly determine that the tenant still lived in the unit.

On the other hand, the tenant's agent testified that following the fire, the tenant effectively vacated the unit and lived with her mother, only returning to the unit to recover her possessions on or about August 25, 2009. As the landlord had changed the locks on the unit, there appears to be no dispute that the tenant effected a forced entry in order to recover her possessions on or about August 29, 2009. The landlord testified that the forced entry resulted in a broken window. The tenant was not present at the hearing to give direct testimony.

Arising from rent which was unpaid when due on August 1, 2009, the landlord's agent issued a 10 day notice to end tenancy for unpaid rent dated August 4, 2009. A copy of the notice was submitted into evidence, and the tenant's agent does not dispute that the tenant received the notice. The notice documents unpaid rent in the total amount of \$1,950.00, and the landlord testified that this reflects the combined total of \$650.00 for

each of the 3 months of May, June and July 2010. The landlord testified that, subsequently, the tenant made no further payment toward rent.

There is no dispute between the parties that a move-out condition inspection report was not completed, and in relation to the fire in the unit, the tenant has served the landlord with a notice of civil claim.

In summary, the landlord seeks compensation for unpaid rent of \$1,950.00, the cost of repair / replacement of a kitchen window, miscellaneous materials and labour associated with the fire in the total amount of \$2,542.01, and the \$50.00 filing fee.

### **Analysis**

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and the affirmed testimony of the parties, and in the absence of direct testimony by the tenant, I find on a balance of probabilities that the tenant resided in the unit until sometime in late July 2009. I further find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated August 4, 2009. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. Accordingly, I find that the landlord has established entitlement to compensation for unpaid rent in the amount of **\$1,950.00\***, as claimed.

Once again, based on the documentary evidence and the affirmed testimony of the parties, and in the absence of direct testimony by the tenant, I find on a balance of probabilities that the tenant damaged the kitchen window in the unit at the time when she forcibly gained entry on or about August 29, 2009. While the tenant had the option of applying for dispute resolution to seek an order instructing the landlord to return her personal property, there is no evidence that she did so. Accordingly, I find that the landlord has established entitlement to compensation for replacement / repair of the window in the amount of **\$297.22\***.

Included in the landlord's evidence is a copy of a "fire report" from the Office of the Fire Commissioner, which describes the tenant's actions leading up to the fire. In the absence of any direct testimony by the tenant and in the absence of either a move-in or move-out condition inspection report, I find on a balance of probabilities that the landlord has established entitlement limited to **\$1,499.74\***. This is comprised of the full amount of \$754.69 claimed for "water damage repair for floors," and \$745.05 which represents one half of the total compensation sought for cleanup costs "from fire

damage,” “paint supplies” and “labour for painting” [(\$1,031.65 + \$122.45 + \$336.00) ÷ 2].

As the landlord has largely achieved success with the application, I find that the landlord has established entitlement to recovery of the **\$50.00\*** filing fee.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$3,796.96** (\$1,950.00 + \$297.22 + \$1,499.74 + \$50.00). Should it be necessary, this order may be served on the tenant, filed 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*.

DATE: March 31, 2011

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Residential Tenancy Branch