

## **DECISION**

**Dispute Codes:**                      Landlords:    MND, MNDC, MNSD and FF  
   Tenants:       MNDC, MNSD, OLC and FF

### **Introduction**

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

By application of March 11, 2011, the landlords seek a Monetary Order for damage to the rental unit, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of June 9, 2011, the tenants seek compensation for damage or loss under the legislation or rental agreement, return of their security deposit in double, one month's compensation for notice given for landlord use, an order for landlord compliance and recovery of their filing fee for this proceeding.

At the commencement of the hearing, the tenants withdrew the request for return of one month's rent and as the tenancy has ended, it would appear an order for landlord compliance with the legislation and rental agreement is moot.

### **Issues to be Decided**

This matter requires a decision on whether both parties are entitled to the awards for the claims submitted taking into account whether the claims are proven, attributable to the other party, reasonable and proven as to amount claimed and whether the parties have acted reasonably to minimize their claimed losses. Damage awards are also considered against reasonable wear and tear and depreciation and the burden of proof lies with the claimant.

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

This tenancy ran from June 28, 2008 to approximately February 18, 2011. Rent was initially \$1,700 per month and was reduced to \$1,200 per month during the tenancy in

consideration of some water intrusion into the rental unit. The landlords hold a security deposit of \$850 paid on June 21, 2008.

Assessing the claims in this matter has been somewhat challenged by non observation of the legislation on the part of both parties.

For example, this is no move-in condition inspection report to set a base line of the condition of the rental unit at the beginning of the tenancy. The landlords advised the tenants by email of their wish to discontinue the tenancy rather than issuing an appropriate Notice to End Tenancy. Similarly, the tenants vacated on the strength of the email and they too did not give notice when they would be moving and did not pay rent for February 2011 but restored full possession of the rental unit to the landlords on or about February 18, 2011.

At the time of the hearing, the rental unit remained unoccupied. The landlord's have done little of the remediation claimed but have provided extensive photographs, although the tenants claimed some appear to have been taken some time before the tenancy began as a portions of the rental unit is shown in a different color that it was during the tenancy. The landlords have also provided written estimates in support of their claims.

As a matter of note, exchanges of emails submitted into evidence indicate a generally civil and respectful relationship.

### **Landlords' Claims**

The landlords submitted the following claims on which I find as follows:

**Refinishing of hardwood floors - \$1,645.** This is an estimate for work which has not yet been done, but the requirement for which is illustrated by the landlords' photographs showing a considerable number of scratches and water marks. The landlords had done the previous refinishing themselves. The tenants had a dog but noted that the landlords had three dogs when they occupied the rental unit.

The tenants stated that much of the need for refinishing was a result of the water intrusion, a claim substantiated to a degree by the rent reduction granted for that reason and evidence of a roof leak over one of the bedrooms. Taking into account some reasonable allowance for normal wear and tear, the water staining, and the fact that

there is only one estimate which at first glance appears to be high, I find that the tenants are responsible for \$300 of this claim.

**Outside landscape and cleanup - \$300.** Photographic evidence submitted by the landlord reflects neglect of the grounds which contained a number of attractive plantings. The write-in clause 44 of the rental agreement, initialled by the parties, makes the tenants responsible for “maintaining the grounds and mowing lawns.” On the basis of the photographic evidence, I find that the \$300 claim to be a reasonable estimate of the cost of rehabilitating the grounds and the claim is allowed in full.

**Hauling of debris, wood cabinet, old mowers, old fridge etc. - \$80 plus \$25.** The landlords’ pictures showed three mowers in the shed. The tenants stated that they had left one functioning one which they had purchased to replace the landlord’s when it broke and that such was also the case with the fridge. I note that there are frequent advertisements on the UsedVictoria.com web site under “household/lawnmowers by persons offering to pick up working and non-working lawn mowers at no charge, for example. Therefore, I am reducing the award on this claim to \$40.

**Broken window - \$50.** I accept the landlords’ claim that the window in question was broken during the tenancy, that it is captured by the tenants promise to return the rental unit as they found it, and that the estimate is reasonable. The claim is allowed.

**General House Cleaning - \$261.** In a post tenancy exchange of emails, the tenant acknowledged the need for cleaning and offered to send professional cleaners. However, the tenant finds the amount claimed to be high. I find that it is in keeping with the lower end of the range normally charged for such services and it is allowed.

**Broken railing - \$25.** I find that the railing was broken during the tenancy but I am unable to assess the degree to which aging contributed and award half of the claim.

**Oil damage to driveway - \$300.** Photographic evidence clearly shows oil accumulation on the driveway. However, the estimate provided includes complete resealing and it is calculated on an internet available formula rather than on-site estimate. I will allow \$100 of this claim.

**Replace 10 broken solar lights - \$35.** The tenants concurred that this damage occurred during the tenancy and I find the claim to be reasonable. It is allowed in full.

**Replace door chime - \$50.** I accept the tenants' evidence that the cover of the chime in question kept falling off and they simply set it aside. The claim is dismissed.

**Repair/replace radiators - \$0.** The landlords submitted no estimate in support of this claim so I cannot assign a value. The claim is dismissed.

**Filing fee - \$50.** Having found substantial merit in the landlords' application, I find that they are entitled to recover the filing fee for this proceeding from the tenants.

**Security Deposit (\$850 plus \$6.76 interest = \$856.76).** Given that the tenants vacated in February 2011 without giving written notice, I find that the landlord's application of March 11, 2011 is made on time to claim on the security deposit. Therefore, I find that the landlords may retain the security deposit in set off against the balance owed.

### **Tenants' Claims**

**Return of one month's rent - \$1,200.** Given that the tenants moved on notice given by email rather than proper service under section 49 of the *Act*, and given that the tenants retained possession, if not occupancy, of the rental unit through much of February but paid no rent, I must find that the tenancy ended by mutual agreement and accommodation. Therefore, the tenants are not entitled to the free month's rent referred to in section 51 of the *Act*. The tenants withdrew this claim in any case.

**Return of the security deposit in double - \$1,700.** Having found that the landlords were entitled to make claim on the security deposit and having awarded it to them in set off, I find this claim must be dismissed.

**Filing fee - \$50.** I find the tenants application to lack sufficient merit to warrant recovery of the filing fee. The claim is dismissed.

Thus, I find that the tenants owe the landlords an amount calculated as follows:

Refinish hardwood floors	\$ 300.00
Outside landscape and cleanup	300.00
Hauling of debris	40.00
Broken window	50.00
General house cleaning	261.00
Broken railing	12.50
Oil damage to driveway	100.00
Replace solar lights	35.00
Filing fee	50.00
Sub total	\$1,148.50
Less retained security deposit & interest from June 21, 2008 to date	<u>- 856.76</u>
<b>TOTAL</b>	<b>\$ 291.74</b>

## Conclusion

In addition to authorization to retain the tenants' security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, for **\$291.74** enforceable through the Provincial Court of British Columbia for service on the tenants.

The tenants' application is dismissed in its entirety.

June 22, 2011