

DECISION

Dispute Codes: MND, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on February 4, 2011 seeking a Monetary Order for damage to the rental unit, damage or loss under the legislation or rental agreement and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the damages claimed taking into account whether damages are proven, attributable to the tenant, reasonable as to remediation costs, and whether the landlord has taken reasonable steps to minimize the losses claimed. 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 April 1, 2008 to December 31, 2010 when it ended pursuant to the landlord's notice to end tenancy for cause over concerns of damage to the rental unit. Rent was \$1,500 per month and the landlord holds a security deposit of \$750 paid on April 1, 2008.

During the hearing, the landlord submitted a summary of claims, cross referenced to numerous receipts and well over 100 photographs in support of the claims submitted and on which I find as follows:

Loss of rent - \$1,016.12. The landlord claims a per diem loss of rent of 21 days on the grounds that he had a new tenant lined up to move in to the rental unit, but was forced to delay the new tenancy due to the fact that the rental unit was left in severe need of cleaning and refuse removal. On the basis of photographic evidence and on the number of claims on which I have found merit, this claim is allowed in full.

General cleaning - \$900. The landlord submitted itemized claims for cleaning by three different persons over a total of 36 hours. I find this claim to be in keeping with the state of the rental unit reflected in the photographic evidence. However, due to an error in an extension of the hourly rate of one person from \$15 per hour to \$25 per hour, that portion is reduced by \$70. I accept the evidence of the landlord that he paid the other two persons \$25 per hour and allow \$830 on this claim.

Cleaning materials - \$150.27 . The landlord submits separate receipts for \$48.18, 22.89 and \$70.20 for cleaning materials. The items claimed appear to have been necessary to complete the cleaning and the claim is allowed in full.

Yard cleaning and refuse disposal - \$450. Again, due to an error in extension in which a \$15 per hour claim was multiplied by 4 hours to equal \$100, the correction reduces the claim by \$40. The claim was for cleaning up a very large amount of dog waste. This claim also includes dump fees five truck loads, emptying and cleaning the walk in crawl space, and the landlords labour for all. The tenant stated that she and the landlord had agreed that she would return to clean up the garbage; however, she did so three or four days after the tenancy ended by which time the landlord had to finish the work to proceed with other remediation. I allow \$410 on the claim.

Repair dog damage to deck railing - \$144.05. The landlord claims two hours labour @ \$25 and submits a receipt for \$94.01 in support of this claim. The tenant stated that the deck was in poor condition from the beginning of the tenancy. I accept the landlord's claim that the only repairs for which he claims are those caused by the dogs. The claim is allowed in full.

Replace missing fence light - \$35.06. The landlord believed a missing fence light cover was removed by the tenant's dogs. However, I accept the tenant's assertion that there could have been a number of causes of the missing cover and that it was not probable the problem was caused by her dogs. This claim is dismissed.

Pressure wash deck, patio and sidewalk - \$50. The landlord makes this claim on the grounds that the pressure washing was made necessary by excessive dog hair and grime. I find that at least a portion of this was necessary as a matter of normal wear and tear on the exterior of the property. I will allow \$15 on this part of the claim.

Replace broken ceiling light in kitchen - \$78.73. This claim for \$25 for the landlord's labour and \$53.73 the replacement is allowed in full.

Replace closet door in back bedroom - \$184.66. This claim includes \$37.50 in labour and \$147.16 for the replacement door. The tenant agreed that the damage had been done during the tenancy and the claim is allowed in full.

Replace broken ceiling light in bedroom – \$25.93. This claim for \$12.50 labour and \$13.43 per receipt for material is allowed in full.

Replace broken dishwasher - \$365.16. By the landlord's evidence, the dishwasher is 10 years old or older, fully depreciated by standard depreciation tables. In addition, I am not persuaded that the tenant contributed to the hastening of its failure. The claim is dismissed.

Replace dryer vent - \$25.93. The landlord makes this claim on the grounds that the exterior outlet of the dryer vent was broken by the tenant's dogs. As the vent was exposed to the wind, and interference by other persons or animals, I am not sufficiently certain it was caused by the tenant or her dogs. The claim is dismissed.

Clean gutters and roof moss & trim overgrown trees - \$75. In the absence of a written agreement to the contrary, I find the landlord responsible for these items by custom. The claim is dismissed.

Rat poison - \$24.94. The landlord claims the rental unit suffered a rat infestation due to the tenant's living conditions and submitted photographs of food stuffs in open areas into evidence. He said also that there had never before been rats in the 42-year-old building. The tenant stated that neighbours had also had rat problems and that she did not go into the walk in crawl space. I find that, knowing of rat problems in the area, the tenant ought to have exercised some vigilance and notified the landlord if there were

signs of an infestation. Therefore, I find the tenant responsible for half of this cost at \$12.47.

Remove and re-caulk bathtub water guards – \$28.03. While the landlord claims there was sufficient grime that these could not be cleaned, I find that this is a matter of routine maintenance and dismiss the claim.

Replace lino in laundry room - \$556.17. The landlord submitted photographic evidence that the tenant's dogs had made holes in the floor in question necessitating its replacement. As the landlord stated the floor was five years old and standard depreciation tables place 10 years as its projected useful life, I allow one-half of this claim at \$288.08.

Painting and patching - \$930. I am persuaded by photographic evidence that the painting in question was necessary. However, on the landlord's evidence that the painting was 2.9 years old, and given that the useful life of interior paint is four years, I find the tenant responsible for one quarter of this claim or \$232.50.

Replace laminate kitchen countertop - \$1,155.84. The landlord gave evidence with supporting photographs showing that the laminate countertop had swollen out of shape, an event he attributed to the tenant leaving standing water on it as was the case when he conducted the home inspection that resulted in the notice to end the tenancy. The landlord stated that it was 10 years old. I cannot be sufficiently certain that the tenant habitually left water on the counter to find her responsible for the damage. Previous use and the quality of countertop may have played a large role in its failure. The claim is dismissed.

Replace vertical blinds - \$676.40. The landlord submitted photographs in support of his claim that the blinds were left so stained and grimy that they could not be cleaned. While the landlord stated that the blinds were 10 years old, I find that the condition in which they were left hastened the need for replacement and allow \$100 of this claim.

Filing fee - \$50. Having found that the application has succeeded on its merits, I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant.

Security deposit plus interest – (\$758.45). As authorized under section 72 of the *Act*, I find that the landlord is entitled to retain the security deposit with interest in set off against the balance owed.

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

Loss of rent	\$1,016.12
General cleaning	830.00
Cleaning materials	150.27
Yard cleaning and refuse disposal	410.00
Repair dog damage to deck railing -	144.05
Pressure wash deck, patio and sidewalk	15.00
Replace broken ceiling light in kitchen	78.73
Replace closet door in back bedroom	184.66
Replace broken ceiling light in bedroom	25.93
Rat poison	12.47
Replace lino in laundry room	288.08
Painting and patching	232.50
Replace vertical blinds	100.00
Filing fee	50.00
Sub total	\$3,537.81
Less retained security deposit	750.00
Less interest (April 1, 2008 to date)	- 8.45
TOTAL	\$2,779.36

Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$2,779.36**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 10, 2011