

DECISION

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

Introduction

This application was brought by the landlord on March 9, 2011 seeking a Monetary Order for unpaid rent and utilities, loss of rent, damage to the rental unit, 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 began on from July 1, 2010 under 13-month fixed term agreement and ended on February 5, 2011 pursuant to a Notice to End Tenancy for repeated late payment of rent served on January 7, 2011. Rent was \$1,275 per month and the landlord holds a security deposit of \$637.50 paid on June 26, 2010.

The tenant vacated without giving notice, attending a move-out condition inspection or providing a forwarding address.

During the hearing, the landlord submitted a summary of claims, receipts and photographic evidence and sworn affidavits from two persons, one who had acted as her agent at the beginning of the tenancy and the other from another party. Both had seen the rental unit at the beginning of the tenancy and at its conclusion and reported notable need for cleaning and damage. The tenant submitted late a narrative outlining some discontent with the rental unit, a conflict with the landlord over the discontinuance of the use of the hot tub and contesting the landlord/s claims.

The landlord claims and I find as follows:

Unpaid rent for February 2011 - \$1, 275. While the tenant concurred that she was responsible for five days of the February rent, she stated that she vacated earlier than the February 28, 2011 deadline on the advice of police officers who attended a dispute over the hot tub on January 20, 2011. I note that the Notice to End Tenancy for repeated late payment of rent predated the hot tub incident and is the primary reason the tenancy ended. The landlord's account of the hot tub incident is that the tenant had not responded to her demand letter of December 12, 2010 to pay her share of utilities from the beginning of the tenancy and she had therefore decided to shut it down. She said use of the hot tub had been granted as a privilege was not a facility included in the rental agreement. The landlord submitted a record of rent payments showing that rent had been paid late in each of the nine full months of the tenancy. I find that the fixed term agreement ended due to the late rent payments and this claim is allowed in full.

Loss of rent for March 2011. The landlord submitted copies of receipts for advertising the rental unit in three area newspapers beginning February 12, 2011 and stated that she had run advertisements on the Craigslist internet site at the same time. I find that in doing so, the landlord acted to minimize her losses as required under section 7 of the *Act*. Taken together with the finding that the tenancy ended due to the tenant's repeated late payment of rent, I find that the landlord is entitled to recover the loss of rent for March from the tenant. The claim is allowed in full.

Advertisements – \$264.44. The landlord claims this amount on the basis of four paid invoices for a total of 28 advertisements in three area newspapers in her attempts to find a new tenant which she was able to do for April 1, 2011. As advertising is normally

considered a cost of doing business the landlord would probably have incurred at the end of the tenancy in any case, this claim is dismissed.

Unpaid gas and electrical bills - \$287.34. Initially, the tenant stated she had not agreed to pay the 30 percent of the utilities represented in this claim, then later said she had authorized the landlord to retain this amount from the security deposit. While the rental agreement does not specify the percentage of sharing, it does not indicate that utilities are included in the rent. As a matter of note, the landlord stated the tenants turned the heater was on the hot tub unnecessarily high to such an extent that the hydro usage triggered an inspection by local municipal authorities.

I find on the balance of probabilities, the tenant was responsible for the utilities and the claim is allowed in full.

Painting - \$305.56. The parties gave evidence that the landlord had permitted the tenant to do some repainting at the commencement of the tenancy to accommodate her color preferences. The landlord claimed that, at the end of the tenancy, there was an excessive number of nail holes and markings on the walls making repainting necessary. The landlord stated that the rental unit had been freshly painted at the beginning of the tenancy but the tenant stated that the paint job appeared to be 10 years old. As the landlord had purchased the rental unit in May of 2010, I find that there is some doubt as to the extent of the depreciation of the paint job.

For that reason, and taking into account some degree of reasonable wear and tear, I reduce the award on this claim to \$150.

Carpet replacement - \$2,576.45. The landlord submitted photographs of what appear to be electric iron burn marks in three different rooms. The tenant denied all knowledge of the burns and suggested the landlord had placed them there in order to pass the cost of new carpets to the tenant. I find it highly illogical that the landlord would have risked such a large expenditure or engaged in such an iniquitous act. The landlord stated that the property vendor had advised her that she had developed the rental suite five years prior to the purchase by the landlord. As standard depreciation tables place the useful life off carpets at 10 years, I find that the carpets have depreciated by half.

In addition, as I have no evidence as to comparative quality of the carpets and as I am not certain that a piece from one room might have been used to patch one or two of the

others, I find some doubt as to whether the landlord has met the obligation to minimize the loss. Therefore, I reduced the award on this claim to \$1,000.

Filing fee - \$100. Having found that the application has succeeded on its merits, I find that the landlord is entitled to recover the \$100 filing fee for this proceeding from the tenant.

Security deposit – (\$637.50). 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:

Unpaid rent for February 2011	\$1, 275.00
Loss of rent for March 2011	1, 275.00
Unpaid gas and electrical bills	287.34
Painting	150.00
Carpet replacement	1,000.00
Filing fee	<u>100.00</u>
Sub total	\$4,087.34
Less retained security deposit (No interest due)	637.50
TOTAL	\$3,449.84

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 **\$3,449.84**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 20, 2011