

## **DECISION**

**Dispute Codes:** OPR; MNR; MND, MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and utilities and damage to the rental unit, to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant LB at his last known address, at some point between July 20 and 25, 2011. The Tenant testified that he had received the documents at about that time. The Landlord did not serve the other Tenants with the documents.

Based on the testimony of both of the parties, I am satisfied that the Tenant LB was sufficiently served with the Notice of Hearing documents and documentary evidence. The other Tenants were not served and therefore, the Landlord's application against them is dismissed. Tenants are jointly and severally responsible for debts and damages incurred during a tenancy. The Hearing continued against the Tenant LB only.

It is important to note that the Tenants FC and BC did not sign the tenancy agreement. The Tenant LB testified that they paid their rent directly to him and that he paid all of the rent to the Landlord directly. The Landlord agreed. Therefore, based on the testimony of both of the parties, I find that the Tenants FC and BC were tenants of the Tenant LB and were not the Landlord's tenants. The Landlord had no claim against the Tenants FC and BC.

### **Preliminary Matter**

At the outset of the Hearing it was determined that the Tenants moved out of the rental unit on July 13, 2011. Therefore the Landlord does not require an Order of Possession and this portion of her application is dismissed.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

Only the testimony and evidence **relevant to the Landlord's application** is described in this section.

This tenancy began on March 1, 2008 and ended on July 13, 2011. The rental unit is a house comprised of two suites. The Tenants LB and AJ (hereinafter referred to as "the Tenants") lived in one suite and rented out the other suite to FC and BC. The Tenants paid the Landlord rent for both of the suites in the amount of \$2,200.00, due the first day of each month. Utilities were not included. The Tenants paid a security deposit in the amount of \$1,100.00 on March 1, 2008.

On June 6, 2011, the Tenants told the Landlord that they would be moving out of the rental unit on July 5, 2011. They provided the Landlord with written notice on June 9, 2011. The Tenant testified that he believed he had an oral agreement with the Landlord that he could pay prorated rent for the five days in the July that he lived in the rental unit. The Landlord denied that they had any such agreement.

On July 3, 2011, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by hand delivering the Notice to the Tenants at the rental unit. The Tenants **did not dispute the Notice** and moved out of the rental unit on July 13, 2011.

The Landlord testified that the Tenants owe \$196.62 in unpaid utilities. The Tenant agreed that he had not paid for the utilities, but stated that the Landlord did not provide him with a copy of the bill until he received her documentary evidence. The Tenant does not dispute this portion of the Landlord's claim.

The Landlord testified that the Tenants left the rental unit "in a mess", did not shampoo the carpets, wash the floors and windows, clean the bathroom, or clean the appliances. She stated that the Tenants left a pile of garbage at the rental property. The Landlord provided an estimate in the amount of \$1,947.00 for the cost of cleaning the rental unit and disposing of the garbage. She stated that she did the clean-up herself, with the exception of shampooing the carpets. The Landlord testified that she paid \$250.00 for the carpet shampoo and stated that it took her 4 or 5 hours to clean the rental unit and get rid of the Tenants' garbage. The Landlord testified that she took "extensive photographs", but none of the photographs were provided in evidence.

The Tenant testified that the carpets were shampooed 3 weeks before the end of the tenancy and that the windows were washed 2 months before the end of the tenancy. He stated that they had a cat and a dog. The Tenant stated that they left a pile of garbage, including an old cabinet and cupboards, neatly stacked at the rental unit. The Tenant estimated that the amount of garbage left behind would fill the box of a ½ ton truck. He stated that everything else was reasonably clean. He testified that he wiped down the inside of the fridge and stove, but did not use oven cleaner. The Tenant stated that he did not move the fridge and stove to clean underneath them because they did not have rollers and he did not want to damage the floor.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent for July, 2011	\$2,200.00
Breach of agreement (damage deposit)	\$1,100.00
Unpaid utilities	\$196.62
Clean-up of rental unit	<u>\$1,503.37</u>
TOTAL CLAIMED	\$4,999.99

### **Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Evidence of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant testified that the parties had an agreement that the tenancy could end on July 5, 2011, and that he would only have to pay prorated rent for the 5 days in July that he occupied the rental unit. The Landlord denied having such an oral agreement with the Tenant. Section 44(1)(c) of the Act allows parties to end a tenancy by mutual agreement, but such an agreement must be in writing.

Section 52 of the Act requires a notice to end tenancy to be in writing. Section 45(1) of the Act defines how a tenant can end a periodic tenancy:

### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the Tenants did not provide the Landlord with written notice that complies with Section 45(1) of the Act and that the Landlord suffered a loss as a result of the Tenants' actions. I grant the Landlord's application for unpaid rent for July, 2011, in the amount of **\$2,200.00**. The Landlord has established her claim for unpaid rent for the month of July, and therefore the Landlord's application to apply the security deposit towards an award for breach of the rental agreement is dismissed.

The Tenant did not dispute that he owes the Landlord **\$196.62** for unpaid utilities and this portion of the Landlord's claim is granted.

Residential Tenancy Branch Policy Guideline #1 requires a tenant to shampoo or steam clean the carpets at the end of the tenancy, regardless of the length of the tenancy, if he had uncaged pets in the rental unit. The Tenant testified that he had a cat and a dog, and therefore, I find that the Tenant was responsible for shampooing the carpet at the end of the tenancy. I do not find 3 weeks before the end of the tenancy to be sufficiently close to the end of the tenancy when there are animals in the rental unit. The Landlord testified that she paid \$250.00 to have the carpets shampooed, but she did not provide a copy of the invoice or receipt for such payment. However, having found that the Tenant did not shampoo the carpets as required, I allow the Landlord a nominal amount of **\$100.00** for the cost of cleaning the carpets at the end of the tenancy.

There was no condition inspection report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy. The onus is on the Landlord to arrange for such inspections to take place. The Landlord provided an estimate for the cost of cleaning the rental unit at the end of the tenancy and removal of the garbage. The amount of the estimate is calculated incorrectly (it states that \$1,475.00 + \$177.00 HST totals \$1,947.00). The Landlord testified that she did not hire the cleaner and chose to do the work herself, with the exception of shampooing the

carpets, which took approximately 4 to 5 hours. Section 37(2)(a) of the Act requires tenants to leave a rental unit **reasonably clean** at the end of a tenancy. Based on the testimony of both parties, I am satisfied that the Landlord had to remove the Tenant's garbage from the rental property and clean the oven with oven cleaner. Therefore, I allow this portion of the Landlord's claim in the amount of **\$100.00** (4 hours x \$25.00 per hour).

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit of **\$1,100.00** towards partial satisfaction of her monetary award. Interest has accrued on the security deposit in the amount of **\$13.80**.

The Landlord has been partially successful in her application and is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent for July, 2011	\$2,200.00
Compensation for the cost of shampooing the carpets	\$100.00
Compensation for the Landlord's labour	\$100.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,646.62
Less security deposit and accrued interest	<u>- \$1,113.80</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$1,533.22</b>

### **Conclusion**

The Landlord's application against the Tenants BC, AJ and FC is dismissed.

The Landlord's application for an Order of Possession is dismissed as the Tenants have moved out of the rental unit and the Landlord has taken possession of it.

I hereby provide the Landlord a Monetary Order in the amount of \$1,533.22 for service upon the Tenant LB. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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*.

Dated: August 24, 2011.

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Residential Tenancy Branch