

## **DECISION**

**Dispute Codes:** Landlord: MNDC, MNSD and FF  
Tenants: MNDC, MNSD and FF

### **Introduction**

These applications were brought by both the landlord and the tenant.

By application of June 14, 2011, the landlord seeks a monetary award for losses arising from the tenant having given late notice and over holding the rental unit, recovery of the filing fee for his proceeding and authorization to retain any award from the security deposit.

By prior application of June 6, 2011, the tenant seeks a monetary award for replacement costs of items left in the rental unit and disposed of by the landlord following the end of the tenancy. The tenant also seeks return of the security deposit and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

These applications require a decision on whether either or both parties are entitled to a monetary award for the claims submitted.

### **Background and Evidence**

This tenancy began on May 1, 2010. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on April 12, 2010.

During the hearing, the landlord gave evidence that the tenant had, on March 21, 2011, submitted notice by email that she would be vacating the rental unit seven days later on March 28, 2011 when movers would remove her belongings. The tenant was out of town and gave the landlord consent to show the unit in her absence.

The landlord's representative acknowledged the notice by return email and advised the tenant that she could be liable for the April rent if the landlord was unable to find a new tenant. On March 28, 2011, the landlord's representative contacted the tenant to arrange a move-out condition inspection. On March 31, 2011, the tenant advised that she had delayed her move out until April 15, 2011 and the landlord replied that a new tenant, scheduled to move in on April 1, 2011 had been rescheduled to April 6, 2011.

The actual move-in took place on April 8, 2011 and the landlord claims seven days per diem for the tenant's over holding for a total of \$203.

On April 2, 2011, the tenant advised the landlord that her movers would be moving her belongings that day. The cleaner who had been scheduled to prepare the rental unit for new tenants called the landlord on April 7, 2011 that she had found some left over belongings in the rental unit and asked permission to have a staff member dispose of them in the dumpster she could complete the cleaning. The landlord withheld consent and attempted unsuccessfully to contact the tenant by telephone. He then attended the rental unit and together with the employee and cleaner, he listed the main items and the three concurred that the abandoned items appeared to be of no value. The landlord stated that 95 per cent of the tenant's property had been removed and the items left behind were lying on the floor unpacked. He specifically mentioned a sofa chair with cat hair on it, a rug in similar state, and rusted bicycle with flat tires on the deck. The smaller items were placed in the dumpster and a dresser and mirror stored outside.

On April 8, the tenant called to the landlord to advise the remainder of her times were being picked up that day and was told of the status of her belongs.

The tenant has submitted a list of items she found missing, a list that does not coincide with that of the landlord, and the tenant claims of \$5,307.37 in replacement costs.

The tenant stated that she had placed a check for the April rent in the mail slot used for such purposes on April 1, 2011 and believed she then had a right to occupy the rental unit for storage purposes throughout April. She stated that goods left behind on April 2, 2011 were because the mover, her brother, could not get everything in to his truck.

## **Analysis**

In keeping with a basic principle of contract law, and as stated at Residential Policy Guideline 11, "A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy." One of the reasons for this principle is made clear in the present case as the party receiving the notice, based on the notice, made a commitment to another party in an effort to minimize losses for both landlord and tenant.

While the tenant submitted payment for April rent, the landlord did not process that cheque or create or extend the tenancy and the tenant had no right to occupy the rental unit by property or person in April. Therefore, I find that the landlord is entitled to an award for the per diem claimed.

Having so found, and in view of the tenant's first notice that her property was to be moved on March 28, 2011, then on April 2, 2011 and then, without advice to the landlord, remnants left to April 8, 2011, I find that it was fully reasonable for the landlord to assume that the remaining property found on April 7, 2011, estimated to be five percent of the tenant's belongings, were abandoned goods.

*Regulation 25(2)(c)* provides that a landlord may dispose of abandoned property if "the cost of removing, storing and selling the property would be more than the proceeds of its sale.."

I am persuaded by the landlord's diligence in withholding consent to the cleaner and employee to dispose of the property until he had attempted to contact the tenant and then personally examined it and took into account the judgments of three parties before arriving at a conclusion on its value.

I find that, as the tenant was over holding, and knowing the landlord had made a commitment to another party for the unit, there was an onus on the tenant to keep the landlord informed.

I find that the landlord has been reasonable in his actions and credible in his submissions and oral evidence with respect to the remaining of the tenant's goods.

Therefore, I dismiss the tenant's application without leave to reapply.

Having found merit in the landlord's application, I find that he is entitled to recover the filing fee for this proceeding from the tenant in addition to the \$203 in compensation for the tenant's over holding.

Thus, I find that accounts balance as follows:

Tenant's credit via the security deposit (no interest due)	\$450.00
Less award to landlord for tenant over holding	- 203.00
Less filing fee	- 50.00
<b>TOTAL</b>	<b>\$197.00</b>

## Conclusion

As authorized under section 72 of the *Act*, I hereby order that the landlord may retain the \$253 award to him from the tenant's security deposit.

As per standard practice, the tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$197.00 for return of the balance of the deposit.

September 8, 2011