

DECISION

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

Introduction

This application was brought by the landlords on June 28, 2011 seeking a Monetary Order for unpaid rent, damage or loss under the legislation or rental agreement, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on June 29, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

As a preliminary matter, evidence submitted by the applicant landlords included a copy of a decision rendered following a hearing on June 24, 2011 in which the named female respondent was found to be an occupant and not a tenant. The landlords had been unaware of the female occupant until they had received the notice of hearing during which they learned she had been resident in the rental unit since October 2010. As the rental agreement remains in the name of the male tenant only, and as the only documentary evidence of a change in the occupant's status is her signature appearing along with that of the tenant on a notice to end tenancy, I must find that she remains an occupant. Therefore, I cannot find her jointly and severally liable for any monetary award for the landlords with respect to the tenancy.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the damages and losses claimed taking into account whether damages are proven, attributable to the tenant and proven and reasonable as to remediation costs and whether the landlords have 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 began on April 1, 2010 after the landlords had purchased the property the previous month at which time, according to the landlords and corroborating third party written evidence, it had been freshly decorated and cleaned in preparation for the sale. The rental unit is one of two units in a side by side duplex.

Rent was initially \$500 per month and was increased to \$800 per month on April 1, 2011. The landlords stated that the apparent increase was a result of the fact that the tenant, an old friend, was financially stressed at the beginning of the tenancy. Therefore, the parties agreed that rent would be substantially below the market value of \$800 per month paid by adjoining unit for the first year.

During the hearing, the landlords submitted a copy of a Notice to End Tenancy signed by the tenant and the occupant, dated May 7, 2011 and setting an end of tenancy date of July 31, 2011.

However, after the tenants failed to pay the rent due on June 1, 2011, the landlord served a Notice to End Tenancy for unpaid rent on June 2, 2011, along with a notice to inspect the rental unit.

Despite an emailed promise to pay on June 6, 2011, when the landlords attended the rental unit they found it had been abandoned. Both front and rear entry doors had been damaged and the front left ajar.

As illustrated by numerous photographs, the rental unit was strewn with garbage with extensive damage throughout. As a matter of note, the landlords submitted a repair estimate from a commercial contractor that set the repairs at \$6,249.60 at minimum with a note that labour costs might well rise.

However, the landlords have stated that they are doing the labour themselves and make claim only for actual losses and costs.

During the hearing, the landlord gave detailed evidence on each of the claims on which I find as follows:

Unpaid rent for June and July 2011 - \$1,600. Based on the notice of May 7, 2011 setting an end date of July 31, 2011 and given that the tenants left without notice of the early departure, and given that the rental unit was left in such a damaged state that the it was not possible to ready it for new tenants for July, this claim is allowed in full.

Materials to secure doors & gate of abandoned unit - \$148.63. As noted, entry doors were left unsecured and the landlord had to purchase various materials to secure them. This claim is supported by receipts, photographic evidence and written evidence from two different parties who stated they had witnessed the male tenant kicking in the front door on more than one occasion. This claim is allowed in full.

Clean up and dumping costs - \$289.14. On the basis of photographic evidence and receipt from the party who took refuse to the dump, this claim is allowed in full. As a matter of note, the landlords gave evidence that the refuse included used syringes, crack pipe and other drug paraphernalia.

Replace front and rear entry doors - \$488.28. Photographic evidence and receipts verify the validity of this claim and it is allowed in full.

Replace missing bedroom and kitchen light fixtures – \$45.44. Photographic evidence and paid receipt substantiate this claim and it is allowed.

Miscellaneous materials for repairing doors - \$89.11. This receipted claim is allowed.

Replace damaged windows - \$200. The landlords gave evidence that the broken windows had been brand new at the beginning of the tenancy. The female landlord stated that the amount claimed was lower than expected because her brother, a professional window installer, had done the work at cost. As a matter of note, he had advised that the glass had been broken from the inside.

Compensation for missing lawn mower - \$100. The landlords submitted a copy of a receipt showing that they had purchased the lawn mower for \$100 from the tenant at the

beginning of the tenancy. The tenant had given the lawn mower, in addition to other of the landlord's property which was subsequently recovered, to person who had helped with the move. This claim is allowed.

Replacing kitchen cabinets - \$250. This claim represents a low estimated cost of replacing kitchen cabinets which, for reasons unknown, the tenant had replaced with units that did not match the lowers. The landlords are attempting to find used units that will fit and match. This clam is allowed.

Paint and painting materials – \$380.97. The landlords had originally claimed \$200 for these materials but submitted receipts and amended their application to show this higher cost. Given that the landlords submitted photos showing that at least one wall had been vandalized with spray paint, paint on a floor, and holes in walls throughout the rental unit, this claim is allowed in full.

The landlords have submitted evidence of but make no claim for a substantial amount of additional damage including deep ruts in the lawn, a hole drilled through the wall and entry door to the crawl space to which tenants were not permitted entry, some dismantling of the crawl space wall separating the two units, and other damage. The landlords also submitted a copy of an internet page in which a person identified as the tenant is shown weighing a quantity of copper wire, the covering from which was left in the crawl space.

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

Security deposits – (\$250). As authorized under section 72 of the *Act*, I find that the landlords are entitled to retain the security deposit of \$250 in set off against the balance owed.

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

Rent for June and July 2011 (2 mos. @ \$800	\$1,600.00
Materials to temporarily secure doors & gate of abandoned unit	148.63
Clean up and dumping costs	289.14
Replace front and rear entry doors	488.28

Replace missing bedroom and kitchen light fixtures	45.44
Miscellaneous materials for repairing doors	89.11
Replace damaged windows	200.00
Compensation for missing lawn mower	100.00
Replacing kitchen cabinets	250.00
Paint and painting materials	\$380.97
Filing fee	50.00
Sub total	\$3,641.57
Less retained security deposit (No interest due)	- 250.00
TOTAL	\$3,391.57

Conclusion

In addition to authorization to retain the tenant's deposits in set off, the landlords' copy of this decision is accompanied by a Monetary Order for **\$3,391.57**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

September 29, 2011