

## **DECISION**

**Dispute Codes:**    Landlord:        MNR, (MNDC), MND, MNSD and FF  
                          Tenants:        MNDC, MNSD , RP and FF

### **Introduction**

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

By application of July 4, 2011, the landlord seeks a Monetary Order for unpaid rent/loss of rent, general cleaning and cleaning of a couch after the tenants left the fixed term rental agreement early. The landlord also seeks to recover her filing fee for this proceeding and authorization to retain the security deposit and pet damage deposits in set of against the balance owed.

By application of July 28, 2011, the tenants seek a Monetary Order for loss of quiet enjoyment, return of the security deposit and recovery of her filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the Act to amend the tenants' application to request an order for return of personal property.

### **Issues to be Decided**

This application requires a decision on whether the both parties are entitled to monetary awards for the claims submitted and disposition of the security deposit.

### **Background and Evidence**

This tenancy began on February 1, 2011 under a one-year fixed term rental agreement set to end on January 31, 2012. Rent was \$1300 per month and the landlord holds security and pet damage deposits of \$650 each paid on or about January 14, 2011.

The tenants vacated the rental unit early, on or about June 28, 2011.

## Landlord's claims

During the hearing, the landlord put forward her claims on which I find as follows:

**Unpaid rent/loss of rent - \$1,300.** The landlord gave evidence that the tenants had initially advised her by text message that they intended to end the tenancy. The landlord met with the tenants and advised them that they would have to give written (signed) notice and that they were obliged by the fixed term agreement. The tenant submitted a written copy of a notice dated May 10, 2011, but the landlord said she had not seen it before receiving the tenants' evidence package. New tenants moved into the rental unit on August 1, 2011 and a Craigslist notice was included in evidence establishing the landlord's efforts to find new tenants.

Section 45(2)(b) of the *Act* provides that a tenant's notice to end a fixed term rental agreement may not set an end date that is earlier than the end date set by the agreement which was January 31, 2012 in the present matter. Section 45(3) of the *Act* creates an exception to this limit with the provision that, "If a landlord has failed to comply with a material term of the tenancy agreement ...and has not corrected the situation within a reasonable period after the tenant gives **written notice** of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. In the absence of "written notice" to the landlord of a material breach, I must find that the tenants cannot rely on section 45(3) even though they have submitted a claim in loss of quiet enjoyment. Therefore, I find that the tenants are responsible for the landlord's loss of rent for July 2011.

Therefore, this claim is allowed in full.

**General cleaning - \$200.** The landlord had amended her application to raise the claim for general cleaning from five hours at \$20 per hour, to 10 hours and supported the claim with a number of photographs that clearly illustrated the need for additional cleaning. However, after some discussion, the landlord agreed to reduce the claim to \$100 and it is allowed.

**Couch cleaning - \$322.00.** The parties concurred that the tenant had agreed to have the couch cleaned due to soiling by the tenants' dog; however, the tenant noted that the estimate submitted by the landlord included a charge for scotch guarding. After

some discussion, the landlord agreed to reduce the claim to \$215.60 and I award that amount.

**Security and pet damage deposits – (\$1,300).** Section 72(2) of the *Act* provides that if the director's delegate finds that money is owed by a tenant to a landlord, the delegate may order that security and pet damage deposits be deducted from the amount owed. In the present matter, I so order.

## **Tenants' Claims**

**Return of drapes.** The tenants had left a set of drapes behind when they vacated the rental unit, but had been unable to retrieve them as the landlord had asked them not to return to the property. The landlord stated that she had sent them by mail to the address given by the tenants, the female tenant's place of employment, but the package had been returned as undeliverable. To avoid a repeat of that failed effort, the parties agreed that the landlord would place the package on the front porch of the rental building for pick up by the tenant at 4:30 p.m. the day of the hearing.

**Limited use of water - \$200.** Among the tenants' claims for loss of quiet enjoyment, the attending female tenant stated that they were substantially inconvenienced by limits placed on the water use. This limitation was in place to accommodate the landlord's occasional business as a hairdresser because the drawing of water from a second tap while she was shampooing a client could result in an unanticipated change in water temperature.

While the landlord stated that this potential inconvenience was clearly understood by the tenants at the beginning of the tenancy, I find that it does constitute a restriction of a service or facility and award \$100 on this claim.

**Compensation for neutering dog - \$384.16.** The parties concur that they discussed the neutering of the tenants' Jack Russell Terrier during a dog-walk together. The landlord stated that the tenant had expressed her intention to do so, but had a change of heart after the tenancy began. The landlord had found that to be a matter of great concern and pledged to release the tenants from the fixed term agreement if they preferred to relocate.

The tenants subsequently had the procedure done and now claim the cost from the landlord. I find the matter to be beyond the *Act*. In addition to the offer to mutually end the tenancy early, the tenants had the option to simply refuse the procedure and put the onus on the landlord to serve a Notice to End Tenancy for cause if she felt the issue was enforceable. Therefore, I make no award on this claim.

**Filing fees - \$50.** Having found that the conduct of both parties contributed to the early end of this tenancy, I find that both should remain responsible for their own filing fees.

Thus, I find that accounts balance as follows:

<b>Award to Landlord</b>		
Unpaid rent/loss of rent -	\$1,300.00	
General cleaning	100.00	
Couch cleaning	<u>215.60</u>	
Sub total	\$1,615.60	\$1,615.60
<b>Less Tenants' Credits</b>		
Security deposit	\$ 650.00	
Pet damage deposit (No interest due)	650.00	
Limited use of water (No interest due)	<u>100.00</u>	
Sub total	\$1,400.00	- 1,400.00
<b>TOTAL balance owed to landlord by tenants</b>		<b>\$ 215.60</b>

## **Conclusion**

In addition to authorization to retain the tenant's security deposits, in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$215.60**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

September 7, 2011