

## **DECISION**

### **Dispute Codes**

Tenant's application filed June 13/11: MNSD; OLC; PSF; FF

Landlord's application filed July 14/11: MND; MNSD; FF

### **Introduction**

These matters were adjourned from July 27, 2011, to consider cross applications. Interim Decisions were provided on June 30 and July 27, 2011. Both parties were mailed the Notice of Reconvened Hearing document by the Residential Tenancy Branch to the address for service noted on the Landlord's application and to the address provided by the Tenant at the Hearing on July 27, 2011. Neither party was required to serve the other with a Notice of Reconvened Hearing document.

The Tenant's application is for a monetary order for double the security deposit paid to the Landlord; for an order that the Landlord comply with the Act, regulation or tenancy agreement; for an order that the Landlord provide services or facilities required by law; and to recover the cost of the filing fee from the Landlord.

The Landlord's application is for a monetary order for damage to the rental unit; to apply the security deposit towards partial satisfaction of her monetary award, and to recover the cost of the filing fee from the Tenant.

### **Preliminary Matter**

These matters were adjourned from July 27, 2011, to be heard on September 2, 2011, at 9:00 a.m. The Landlord signed into the teleconference on time, but by 9:10 a.m., the Tenant had not signed into the teleconference. Therefore, the Tenant's application is dismissed without leave to reapply.

### **Issue(s) to be Decided**

1. Is the Landlord entitled to a Monetary Order pursuant to the provisions of Sections 7 and 67 of the Act?

### **Background and Evidence**

The Landlord provided the following testimony:

The Landlord provided the Tenant with copies of her documentary evidence by registered mail sent July 22, 2011. The Landlord provided the tracking number for the registered documents. The Canada Post tracking system indicates that an attempt was made to deliver the documents to the tenant on July 25, 2011, and a second attempt was made on August 3, 2011. Both times a notice was left for the Tenant indicating where the documents could be picked up. The tracking system indicates that the Tenant signed for the documents on August 22, 2011. I am satisfied that the Tenant was served with the Landlord's evidence package.

The Landlord testified that:

- The tenancy began on or about August 1, 2010.
- There was no written tenancy agreement.
- The Tenant paid a security deposit in the amount of \$550.00 on August 3, 2011.
- Monthly rent was \$1,100.00, not including utilities, and was due on the first day of each month.
- The Landlord issued a Notice to End Tenancy but the tenancy ended, by mutual agreement, on or about April 16, 2011. The agreement was that the Tenant would pay only ½ of the monthly rent for April, 2011. The Tenant did not give the Landlord the keys back to the rental unit until the week after the Tenant moved out.
- There were no inspections performed at the beginning or the end of the tenancy.
- The Tenant did not clean the rental unit before she moved out and left a lot of garbage on the rental property. The Landlord provided photographs of the rental unit and property taken at the end of the tenancy.

The Landlord seeks \$550.00 for the remainder of the month of April because she submits that the Tenant did not vacate the house on April 16<sup>th</sup>, as agreed, and it took two weeks to clean and repair the house. The Landlord testified that she has not re-rented the rental unit.

The Landlord testified that the Tenant removed a shelf from a wall, leaving holes in the wall. The walls in the hallway, kitchen, living room, kitchen and one bedroom had to be repaired and repainted due to damage caused by the Tenant. The interior of the house was last painted in 2006.

The Landlord testified that the Tenant did not clean any of the carpets. The Landlord stated that she replaced all of the carpets with the exception of the stairs, and therefore seeks to recover the cost of cleaning the stair carpets only (\$67.20). The Landlord provided a copy of the receipt in evidence.

The Landlord seeks \$200.00 to compensate her for her labour in cleaning the rental unit, plus a total of \$480.00 for repairing, painting, rubbish removal, consulting and loss of wages.

The Landlord seeks to recover \$90.00 that the Tenant received in a utility rebate, which the Landlord states did not belong to the Tenant. She testified that it belonged to the previous tenant. The Landlord did not pay the previous tenant \$90.00 for his rebate.

The Landlord seeks to recover the cost of yard clean-up, loading and hauling garbage to the dump (3 pick-up loads) and pressure washing the driveway, for a total of 7.5 hours at \$20.00 per hour (\$150.00). The Landlord provided a handwritten receipted bill in evidence signed by the person who did these things.

The Landlord seeks to recover the cost of dismantling a hothouse frame and watering system that the Tenant erected without her permission, yard clean-up, unblocking the laundry sink and bathtub, replacing broken screen door, dump fees, and repairing and painting walls for a total of \$360.00. The Landlord provided a copy of a statement from the person who did these things.

The Landlord seeks to recover the cost of hiring a cleaner to clean the rental property (5.5 hours @ \$20.00 per hour = \$110.00). The Landlord provided a copy of a statement from the cleaner.

The Landlord seeks to recover the cost of developing photographs (\$20.60) and other miscellaneous costs associated with filing her application (\$100.00).

### **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. Proof 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.

I dismiss the Landlord's claim with respect to recovery of the costs of developing photographs and other miscellaneous costs as these are not costs that are contemplated or recoverable under the provisions of the Act.

I dismiss the Landlord's claim for loss of rental income for the remainder of April, 2011. The Landlord testified that she has not re-rented the rental unit and therefore I find that she has not suffered a loss.

I dismiss the Landlord's claim with respect to the \$90.00 rebate the Tenant received from the utility company. The Landlord testified that the rebate belonged to a previous tenant, and that the Landlord had not provided the previous tenant with compensation for the rebate. Therefore, I find that the Landlord has not suffered a loss.

The Landlord did not provide sufficient evidence (for example completed Condition Inspection Reports) to prove that the Tenant caused damage to the walls, screen door and plumbing. The Landlord's claim with respect to these damages is dismissed.

Based on the photographic evidence provided, I am satisfied that the Tenant left a lot of junk and debris at the rental unit and did not leave the rental unit in a satisfactory state of cleanliness, as required under Section 32 of the Act. The Landlord claims for her labour totalling \$680.00. I find this to be excessive. However, based on the undisputed testimony and documentary evidence provided, I do accept that there was considerable work required to clean the rental property and remove garbage. I award the Landlord the sum of **\$200.00** (10 hours @ \$20.00 per hour) for her labour. I also allow the Landlord's claim for the cost of the cleaner in the amount of **\$110.00**.

Based on the undisputed testimony and documentary evidence of the Landlord, I allow the Landlord's claim for the cost of cleaning the stair carpet in the amount of **\$67.20** and with respect to the invoice in the amount of **\$150.00** for yard clean-up, dump removal and pressure washing the driveway. I have carefully considered the invoice in the amount of \$360.00 and separated out the portion that relates to clean up of the yard and dump fees. I award that portion to the Landlord in the amount of **\$145.00** (6 hours labour @ \$20.00 plus \$25.00 associated fees).

The Landlord has established a total award, calculated as follows:

Landlord's labour	\$200.00
Cost to hire cleaner	\$110.00
Cost to shampoo stair carpet	\$67.20
Yard clean-up and dump fees (\$150.00 + \$145.00)	<u>\$295.00</u>
TOTAL AWARD	<b>\$662.20</b>

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

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the **\$550.00** security deposit in partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlord a Monetary Order against the Tenant, calculated as follows:

Landlord's monetary award	\$662.20
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$712.20
Less set-off of security deposit	<u>-\$550.00</u>
Balance due to the Landlord	<b>\$162.20</b>

### **Conclusion**

The Tenant's application is **dismissed without leave to reapply**.

I hereby provide the Landlord a Monetary Order in the amount of **\$162.20** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: September 7, 2011

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Residential Tenancy Branch