

DECISION

Dispute Codes: MNR; MNDC, MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for damages to the rental unit and loss of revenue; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlords gave affirmed testimony at the Hearing.

The Landlords testified that the Notice of Hearing documents and copies of their documentary evidence were couriered to each of the Tenants, via express courier on June 15, 2011, to the forwarding address provided by the Tenants at the end of the tenancy. The Landlords provided a copy of the Tenants' handwritten note advising of their forwarding address and copies of the shipment receipts for both of the packages.

Based on the Landlords' affirmed testimony and the documentary evidence provided, I am satisfied that both of the Tenants were sufficiently served with the Notice of Hearing documents and documentary evidence pursuant to the provisions of Section 71(2)(c) of the Act. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Landlords gave the following testimony and evidence:

This tenancy began on September 1, 2010. A copy of the tenancy agreement was provided in evidence. This was a one year fixed term tenancy ending on August 31, 2011. Monthly rent was \$950.00, including utilities, due on the 1st day of each month. The Tenants paid a security deposit in the amount of \$475.00 on August 25, 2010.

The Landlords testified that on May 2, 2011, they received written notice that the Tenants were ending the tenancy effective June 1, 2011. The Landlords provided a copy of the notice in evidence. They testified that on May 20, 2011, they received a

second letter from the Tenants indicating that they would be moving out on May 21, 2011. The Landlords provided a copy of that letter in evidence.

The Landlords testified that the Tenants told them they were ending the lease for cause because the Landlords did not attend to extermination of bugs and repairs that were required. The Landlords deny this allegation.

The Landlords testified that the rental unit was re-rented for July 1, 2011, for \$800.00 per month, not including utilities. The Landlords testified that monthly utilities averaged \$125.00 per month, and therefore, the Landlords seek to recover \$25.00 per month for the rental shortfall for the remaining term of the tenancy, and \$950.00 for loss of revenue for the month of June, 2011.

The Landlords testified that the parties met for a Condition Inspection on May 21, 2011. A copy of the Condition Inspection Report was provided in evidence. The Landlords testified that the Tenants did not shampoo the carpets at the end of the tenancy; did not leave the rental unit in a reasonable state of cleanliness; left garbage at the rental unit; damaged a ceiling fan; broke the closet doors; damaged the kitchen floor; and removed the Landlords' portable heater from the rental unit.

The Landlords testified that, contrary to the terms of the tenancy agreement, the Tenants smoked in the rental unit. In addition, the Landlords testified that the Tenants installed a large 3 ½ x 2 ½ x 1 ½ foot fish tank directly under a fan, without the Landlords' permission. They stated that the fish tank was not covered and that the moisture from the tank caused swelling on one of the blades of the fan, causing it to wobble when it was turned on. The Landlords testified that the fan was new when the Tenants moved into the rental unit, and had to be replaced. The Landlords testified that the Tenants were rough with the closet doors and therefore new hardware, tracks and handles had to be installed at the end of the tenancy. The Landlords stated that the closet doors were two years old. The Landlords provided photographs of the rental unit in evidence, which were taken at the end of the tenancy.

The Landlords provided receipts for the cost of shampooing the carpets; cleaning supplies; new fan; dump fees; and new hardware for closet doors. The Landlords testified that it took them 37 hours to clean the rental unit at the end of the tenancy. The Landlords stated that a new kitchen floor and bathroom floor were installed three years old. The Landlords provided an estimate for the cost of replacing the heater. The Landlords provided a quote for the cost of replacing the kitchen floor and bathroom floor three years ago, in the total amount of \$846.92. The Landlords testified that the kitchen floor is twice the area of the bathroom floor, and therefore they are claiming half of that cost. The Landlords testified that the dump fees included the cost of dumping some

materials that were not left by the Tenants and therefore they seek to recover ¼ of that cost.

The Landlords requested a monetary award for loss of revenue and damages, calculated as follows:

Loss of revenue for June, 2011	\$950.00
Loss of revenue for July and August, 2011	\$50.00
Cost to clean carpets	\$208.62
Materials (\$239.46) and labour (37 hours @\$20.00) for cleaning rental unit	\$1,079.46
Estimated cost to replace heater	\$150.00
Estimated cost to replace kitchen floor	\$423.46
Cost to replace fan	\$123.20
Materials (\$100.92) and labour (6 hours @\$20.00) to re-install closet doors	\$220.92
Tenants' share of dump fees	<u>\$38.50</u>
TOTAL AMOUNT CLAIMED	\$3,244.16

Analysis

This is the Landlords' claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard.

To prove a loss and have the Tenants pay for the loss requires the Landlords 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 Tenants 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 Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenants breached the Act by ending the tenancy before its term. The Tenants gave written notice to end the tenancy on June 1, 2011, which is insufficient notice for two reasons: this was a fixed term tenancy, expiring August 31, 2011; and tenancies must end on the day before the day in the month that rent is payable under the tenancy agreement. I allow the Landlords' claim for loss of revenue for the month of June, 2011, in the amount of **\$950.00**.

The Landlords testified that they re-rented the rental unit at a loss of \$25.00 per month for the remaining term of the tenancy. They based this calculation on a monthly average of \$125.00 for utilities that they paid while the Tenants were living in the rental unit. The Landlords did not provide copies of the utility bills to support this claim and therefore I find that they have not met parts 1 or 3 of the test for damages, as set out above. This portion of their claim is dismissed.

Based on the testimony and documentary evidence provided by the Landlords, I find that they have established their claim with respect to the missing heater in the amount of **\$150.00**. The missing heater was noted on the Condition Inspection Report, which the Tenant LS signed.

Based on the Landlords' testimony and the photographic evidence, I am satisfied that the Tenants left garbage at the end of the tenancy. I find the amount claimed by the Landlords to be reasonable, and allow this portion of their claim in the amount of **\$38.50**.

The Residential Tenancy Branch Policy Guidelines provide that carpets be shampooed at the end of a tenancy if the tenants had pets or smoked in the rental unit. I am satisfied, based on the photographic evidence, that the carpets were not shampooed and there is evidence of smoking material on the carpet. I allow the Landlords' claim with respect to the cost of renting the carpet shampooer, carpet shampoo and odour remover in the amount of **\$68.62**.

Based on the testimony and documentary evidence provided, I am satisfied that the Tenants damaged the closet doors beyond normal wear and tear and I allow the Landlords' claim for the cost of new hardware for the closet doors in the amount of **\$100.92**.

Section 37(2)(a) of the Act requires tenants to leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. The Landlords provided the Condition Inspection Report and photographs which show that the rental unit was not in a reasonably clean state at the end of the tenancy. I have reviewed the receipts provided for the cost of cleaning supplies and allow this portion of the Landlords' claim in the amount of **\$223.20** (which is the amount claimed less \$5.59 for some lip salve and \$.67 for the HST).

The Landlords have claimed for the cost of their labour, as follows: 37 hours for cleaning; 7 hours for shampooing carpets; and 6 hours for installing new hardware on the closets. The Landlords have a high standard for cleanliness. The Act requires only

a reasonable standard of cleanliness and I find the Landlords' claim for labour to be excessive. I allow this portion of their claim, as follows: 12 hours for cleaning; 3 hours for shampooing the carpets; and 2 hours for installing new hardware on the closet doors. This comes to a total of 17 hours for the Landlords' labour. I find the amount of \$20.00 per hour to be reasonable and allow this portion of the Landlords' claim in the amount of **\$340.00**.

There is insufficient evidence that the fan was damaged by the Tenants. There is no mention of the damage on the Condition Inspection Report and no photographic evidence with respect to this portion of the Landlords' claim. This portion of the Landlords' application is dismissed.

Based on the Landlords' testimony and the photographic evidence, I am satisfied that the Tenants cut squares of some linoleum from in front of the oven and replaced them with pieces cut from under the refrigerator. There are what appear to be burns from an element on the linoleum underneath the fridge. The patches in front of the oven are showing signs of lifting.

The remainder of the flooring appears to be in very good condition. The Landlords testified that the kitchen and bathroom floors were redone 3 years ago and that the kitchen is approximately twice the size of the bathroom. I find the Landlords' claim for half the cost of the flooring to be reasonable and allow this portion of their claim in the amount of **\$423.46**.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary award. No interest has accrued on the security deposit.

The Landlords have been partially successful in their application and are entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I find that the Landlords are entitled to a Monetary Order against the Tenants, calculated as follows:

Loss of revenue for June, 2011	\$950.00
Tenants' share of dump fees	\$38.50
Cost of renting carpet shampooer and supplies	\$68.62
Cost of replacing closet hardware	\$100.92
Cleaning supplies	\$223.20
Landlords' labour (17 hours x \$20.00 per hour)	\$340.00
Damage to kitchen floor	\$423.46

Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,344.70
Less security deposit	<u>- \$475.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$1,869.70

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$1,869.70** against the Tenants. This Order must be served on the Tenants and 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: September 22, 2011.

Residential Tenancy Branch