

DECISION

Dispute Codes:

MND; MNR; MNDC, MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for damage to the rental unit and compensation for 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 parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Were the Tenants co-tenants, or did they have separate tenancy agreements with the Landlord?
- Is the Landlord entitled to a Monetary Order as claimed, and if so, in what amount?

Background and Evidence

The Landlord testified that the Tenant MK moved into the rental unit on March 1, 2011. The Tenant MK testified that he moved into the rental unit in January, 2011, filled out a rental application on February 9, 2011, and signed a tenancy agreement on March 1, 2011. He stated that the Landlord never signed the tenancy agreement.

The Landlord testified that monthly rent was \$835.00, due on the first day of each month and that he is holding \$400.00 as a security deposit for both Tenants. It is the Landlord's position that they are co-tenants. He stated that they paid their rent together and that either Tenant would provide him with the rent, but it was generally MK who paid the rent. The Landlord testified that the Tenant LP moved into the rental unit on April 1, 2011.

The Landlord testified that he did not complete a Condition Inspection Report with the Tenants at the end of the tenancy because he was dealing mainly with the Tenant MK who was never available to meet and do the inspection.

The Landlord testified that the Tenants did not clean the carpets at the end of the tenancy and that he had replaced the living room carpets with laminate flooring. He stated that the Tenants had repaired damage to the walls, but had not painted over the

repairs. He submitted that the Tenants did not clean the stove before they moved out. The Landlord testified that the Tenants did not give one full month's written notice to end the tenancy and that he was not able to re-rent the rental unit until September 15, 2011.

The Landlord seeks a monetary award against both Tenants, calculated as follows:

Description	Amount claimed
Compensation for cleaning the oven	\$40.00
Compensation for touching up the walls	\$60.00
Cleaning the carpets (stairs and 2 bedrooms)	<u>\$100.00</u>
TOTAL CLAIM	\$617.50

The Tenant MK submitted that he moved into the rental unit to replace another tenant who was moving out. He testified that he gave the Landlord \$200.00 as a security deposit and that he believed the Landlord also retained a security deposit from a previous tenant. He stated that when he replaced the other tenant, he became roommates with the remaining occupant who had pets. The Tenant testified that the carpet was in bad condition from the remaining occupant's animals urinating and defecating on it.

The Tenant MK stated that he had hung some items on the walls but that the walls in the rental unit were damaged when he moved in. He stated that there was no Condition Inspection Report completed by the Landlord and him at the beginning or the end of the Tenancy. He testified that he performed a move-in inspection by himself on March 1, 2011, and gave a copy of the Report to the Landlord. He acknowledged that he did not clean the oven at the end of the tenancy and agreed that he told the Landlord that he could keep \$70.00 from the security deposit for the cost of cleaning the stove and for some of the wall repairs. The Tenant MK stated that he gave the Landlord proper notice of his intent to move out of the rental unit on August 31, 2011. He submitted that the Landlord had told him that he had re-rented the rental unit for September 1, 2011. The Tenant MK testified that he and the Tenant LP had separate rental agreements with the Landlord. He testified that he received \$200.00 as a security deposit from the Tenant LP, which he gave to the Landlord.

The Tenant LP submitted that in early March, 2011, she responded to the Tenant MK's ad seeking a roommate. She submitted that she moved into the rental unit on March 15, 2011, and provided the Tenant MK with \$600.00 for ½ of March's rent and for the

month of April. She stated that she also gave him \$200.00 for her half of the security deposit.

The Tenant LP testified that the Landlord met with her on April 1 or 2, 2011, and she filled out an application form. She stated that the Landlord told her she would have to sign a separate tenancy agreement and that she was responsible for ½ of the rent. The Tenant LP stated that she made a note on the bottom of the application form that the carpets were badly stained, her bedroom window was cracked and the washer and dryer were not working. The Tenant LP testified that she maintained another residence over the summer months and intended to move back into the rental unit on September 1, 2011. She submitted that the Tenant MK advised her on July 15, 2011, that he would be moving out of the rental unit at the end of August. The Tenant LP submitted that she advised the Landlord on August 11, 2011, by e-mail, that she would be moving out of the rental unit effective August 31, 2011.

The Tenant LP's position is that she had a separate tenancy agreement with the Landlord. She stated that she had told the Landlord that he could retain \$100.00 from her share of the security deposit for carpet cleaning, oven cleaning and wall repair and that the Landlord did not mention anything about requiring compensation for loss of revenue for half of September. The Tenant LP stated that in exchange for her agreeing that he could retain \$100.00 from her security deposit, the Landlord had agreed to return the remaining \$100.00 of her security deposit to her.

Analysis

This is the Landlord's application and therefore the onus is on the Landlord to prove his claim on the civil standard, the balance of probabilities. The parties disagreed with respect to whether or not the Tenants had separate tenancy agreements with the Landlord. Section 13 of the Act requires the Landlord to prepare every tenancy agreement **in writing**. I find that the Landlord provided insufficient documentary evidence (for example a copy of the tenancy agreement) to prove his claim that the Tenants were joint Tenants under the same tenancy agreement. The Tenants provided testimony that they were tenants under separate tenancy agreements with the Landlord, and I accept their testimony in the absence of proof to the contrary.

The Tenant MK testified that the Landlord advised him that he had re-rented the rental unit effective September 1, 2011. The Landlord did not provide sufficient evidence (for example, a copy of the tenancy agreement with his new tenant) to support his claim that the rental unit was not re-rented until September 15, 2011. Therefore his application for compensation for loss of revenue is dismissed.

I find that the Landlord failed to meet start-of-tenancy or end-of-tenancy condition inspection report requirements, contrary to the provisions of Sections 24 or 36 of the Act

and therefore, he has not provided sufficient evidence that the Tenants caused any damage to the rental unit. However, the Tenants each separately agreed that the Landlord could retain a portion of their security deposits. Therefore, I allow the Landlord's claim against the Tenant LP in the amount of \$100.00 and the Landlord's claim against the Tenant MK in the amount of \$70.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposits towards satisfaction of the Landlord's monetary claim. I hereby Order the Landlord to return the residue of the security deposit to the Tenants, as follows:

Tenant LP:	
Security Deposit paid	\$200.00
Less amount of Landlord's monetary award against her	<u>\$100.00</u>
Total refund of security deposit to Tenant LP	\$100.00

Tenant MK:	
Security Deposit paid	\$200.00
Less amount of Landlord's monetary award against him	<u>\$70.00</u>
Total refund of security deposit to Tenant MK	\$130.00

I hereby provide each Tenant with a Monetary Order against the Landlord, in the amounts indicated above.

I find that the Tenants had agreed to the deductions from their security deposits, as noted above, prior to the Landlord filing his Application for Dispute Resolution and therefore order that the Landlord bear the cost of the \$50.00 filing fee.

Conclusion

The Landlord may apply **\$100.00** from the Tenant LP's security deposit and **\$70.00** from the Tenant MK's security deposit.

I hereby provide the Tenant LP a Monetary Order in the amount of **\$100.00** for service upon the Landlord, representing return of the balance of her security deposit after setting off the Landlord's monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

I hereby provide the Tenant MK a Monetary Order in the amount of **\$130.00** for service upon the Landlord, representing return of the balance of his security deposit after setting off the Landlord's monetary award. This Order 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: December 23, 2011.

Residential Tenancy Branch