

## **DECISION**

Dispute Codes      MNR, MND, MNSD and FF

### Introduction

This application was brought by the landlords on November 9, 2011 seeking a monetary award for unpaid utilities, damage to the rental unit, replacement of missing items, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain all or part of the security deposit in set off.

Claims in damages require that several factors be taken into account: The comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

### Background, Evidence and Analysis

This tenancy began on April 1, 2010 and ended on October 31, 2011. Rent was \$1,300 per month and the landlord held security and pet damage deposits of \$650 each paid at the beginning of the tenancy.

The pet damage deposit was returned on November 14, 2011 and the landlord still retains the security deposit of \$650.

The landlord claims and I find as follows:

**Hydro bill - \$71.** Under the rental agreement, the tenants were responsible for 60 percent of the hydro billings and had a \$100 credit toward the final billing at the conclusion of the tenancy. The tenants agreed to pay the balance by an agreement signed on October 30, 2011. The landlord submitted a copy of the final billing of \$285.05. The tenants' share of that was \$171.03. less the \$100 credit leaving a balance of \$71.03. The claim is allowed.

**Two sets of Drapes - \$950.** The landlord claims two sets of drapes which were missing at the end of the tenancy. The tenants' gave evidence that, as they appeared to be old and in poor condition at the beginning of the tenancy, they asked the daughter/sister of the landlords if they could replace them. The tenants stated that she gave her consent at the move-in, and confirmed during their telephone enquiry a week later, that the tenants they could do whatever they wanted with the old drapes. When the father landlord asked for them back at the end of the tenancy and did not accept the tenants' explanation, they offered to let him keep the replacements they had purchased which he declined. They also agreed to consent to the landlord retaining \$200 from their deposits if the balance was returned that day, which the landlord declined.

Standard depreciation tables place the useful life of interior draperies at 10 years. On the basis of photographic evidence submitted by the landlords, the drapes appear to be much older. The landlord said they were four years old but had been of an old style and material. The landlord submitted replacement estimates of ranging from \$1,992 to \$2,300. In the absence of verification of the age of the drapes, I find that the landlord has not met the burden of proof as to their value and I find some merit in the evidence of tenants that they were in poor condition and that they had the consent of the landlord's daughter to dispose of them. This claim is dismissed.

**Replace window locks – unspecified.** The landlord claims replacement costs of broken window locks and hardware. The tenants stated that the window locks had not worked from the outset of the tenancy, a matter of great concern to them which they had unsuccessfully asked the landlord to remedy. The landlord stated that the rental building was approximately 30 years old and on that fact, I find that the malfunctioning of the locks may well have been a matter of normal wear and tear. This claim is dismissed.

**Repair broken railing - \$50.** The landlord submitted a photograph of a railing beside the staircase in which the horizontal rail is separated from the vertical post by

approximately one-inch. The tenants were not aware of ever having impacted the railing and surmise the damage may have been done when the landlord's daughter was moving his furniture out of the rental unit. I find that his defect is sufficiently visible that the tenants should have noted it during the move-in inspection or immediately following their move in. The landlord stated that he has had an estimate of \$50 to repair the railing. This claim is allowed.

**Two light bulbs - \$5.00.** The tenants were of the view that light bulb replacement is a matter of normal wear and tear. In fact, tenants are customarily expected to replace any burned out bulbs at the end of a tenancy. This claim is allowed in full.

**Filing fee - \$50.** Having found some merit in the application, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

**Security deposit – (\$650).** As authorized under section 72(2) of the *Act*, I find that the landlord is entitled to retain the amount found owing from the tenant's security deposit and must return the balance.

Thus, I find that accounts balance as follows:

<b>Tenants' credit</b>		
<b>Less award to landlords</b>		
Balance of hydro bill	71.03	
For repair of broken railing	50.00	
Replace two light bulbs	5.00	
Filing fee	<u>50.00</u>	
<b>Sub total (award to landlords)</b>	<b>\$176.03</b>	<b>- 176.03</b>
<b>TOTAL to be returned to tenants</b>		<b>\$473.97</b>

### Conclusion

As permitted under section 72 of the *Act*, I authorize and order that the landlord may retain \$176.03 from the tenant's security deposit in satisfaction of the claims awarded herein.

Having found that the landlord must return \$473.97 of the deposit to the tenants, the tenants' copy of this decision is accompanied by a Monetary Order for \$493.97,

enforceable through the Provincial Court of British Columbia, for service on the landlords.

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: January 30, 2012.

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Residential Tenancy Branch