

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulations or the tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the evidence packages submitted by the other party, I am satisfied that both have been properly served with the notice of hearing and evidence under the Act. The Landlord has submitted an amended monetary claim which the Tenant takes issue with. I note that both the Residential Tenancy Branch and the Tenant received the documents within the allowed time frame. The Tenants has not indicated what if any delay/adjournment would be needed to respond to this evidence. The Tenant, C.O. states that there is no issue with the evidence other than the amended monetary claim amount. I find that no issue has resulted in the delayed monetary amendment and the hearing may proceed.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

### Background, Evidence and Analysis

This Tenancy began on August 1, 2011 on a fixed term tenancy ending on July 31, 2012 as shown by the submitted copy of the signed tenancy agreement. Both parties agree that the Tenant vacated the rental unit at the end of February 2012. The monthly rent was \$1,250.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$625.00 was paid.

The Landlord is seeking recovery of \$651.84 based upon an invoice from Coniston Products for the replacement of the main bedroom window seals. The Landlord states

that she was advised by the contractor that through excessive moisture that mold occurred which caused the seals on the bedroom windows to fail, requiring them to be replaced. The Landlord relies on the invoice from the contractor, photographs and the incomplete condition inspection report. The Tenants disputes this stating that they have lived there for approximately 8 months and that they consider this normal wear and tear. The Tenant has submitted numerous letters of correspondence between the Landlord and themselves over the tenancy. Both parties agree that the building is approximately 4 years old at the time of this hearing.

I find that the Landlord has established a claim for the recovery of the \$651.84 for the replacement of the window seals. This cost is supported by the invoice submitted by the Landlord. In reviewing the documentary evidence submitted by both parties, the Tenant has provided numerous letters of correspondence regarding moisture/mold issues in the main bedroom/ensuite areas. Letters from the Landlord to the Tenant dated November 12, 2011 clearly show concerns of mold on the "caulking and drain" in the ensuite shower and windows in the master bedroom. There is also reference to a letter date August 1, 2011 "a welcome letter" to the Tenants expressing concerns for air flow to prevent possible condensation/ moisture from the beginning of the tenancy. Both parties also provided evidence of a de-humidifier being installed by the Landlord in November of 2011. On this basis, I find that the Landlord has a pattern of inspections and diligence with the Tenants to deal with any potential moisture issues and that the Tenants were aware of these potential issues and failed to act reasonably.

The Landlord seeks recovery of \$100.00 based upon an invoice from SmartChoice Construction&Maintenance for the re-caulking of the bathroom shower. The Tenant has noted that there is an extra item noted on the invoice for the installation of a new lock. The Landlord states that this work was done without cost. The Tenant disputes this stating that the invoice indicates the work that was done and the cost charged.

I find that as the Tenant has not disputed this need for the re-caulking of the bathroom shower that this claim has been established. This issue was also brought up in the Tenant's evidence over moisture and proper air flow in letters sent to the Tenant from inspections that the Landlord. However the Tenant has pointed out an issue of extra work noted on the invoice and the Landlord has no supporting evidence that this cost was not charged for as noted on the invoice. I find that the Landlord has established a monetary claim for \$40.00 for the re-caulking of the shower.

The Landlord is seeking \$51.97 for the replacement of a bathroom door as noted in a quote for the replacement of the door. The Tenant disputes this stating that the door does not require replacement as there were only two holes left when the hanger was

removed. The Tenant has acknowledged that the removal of the hanger would require repair of the holes.

The Landlord has established a claim for compensation for the leftover holes from the hanger. However, the Landlord relies on a quote and has not suffered a monetary loss as yet since the door has not yet been replaced for the amount sought. The Landlord has not attempted to repair the damage or seek any consultation for it. I find that the Landlord is only entitled to a nominal award as such for \$30.00.

The Landlord is seeking recovery of Strata imposed fines of \$200.00 because there was an unauthorized move out by the Tenants in contravention of strata bylaw #25. The Landlord has attached a letter dated March 23, 2012 detailing the fine and a copy of the strata form "K" agreement. The Tenant concedes this claim and admits that no notice was given. The Landlord has established the claim for recovery of the \$200.00.

The Landlord is also seeking recovery of \$6,250.00 for loss of rental income for the remaining portion of the signed fixed term tenancy. The Tenant disputes this citing that there were many issues over the tenancy leading up to the end of tenancy. The Landlord has submitted a copy of the signed fixed term tenancy which states that 5 months remain from March 2012 until July 31, 2012 ( $\$1,250.00 \times 5 = \$6,250.00$ ). The Tenant has provided no comment on the Landlord's claims. The Landlord states that she immediately began advertising the rental unit at the beginning of March 2012 for immediate vacancy. Both parties have provided evidence of the Landlord's internet listings to re-rent the unit. The Landlord states that many posting have been made with many showings, but that the rental remains vacant as of the date of this hearing. I find that the Landlord has established that the Tenant failed to give proper notice and breached the fixed term tenancy, however as of the date of the hearing the rental unit is still actively being posted for rent. The June and July portion of the claim is dismissed with leave to reapply as I find that it is pre-mature to determine if a loss will occur. The Landlord has established a claim for loss of rental income for the period March to May 2012 (3 months) totalling, \$3,750.00 ( $\$1,250.00 \times 3$ ).

The Landlord has established a total monetary claim of \$4,671.84. The Landlord is also entitled to the recovery of the \$100.00 filing fee. I order that the Landlord retain the \$625.00 deposit in partial satisfaction of the claim and I grant a monetary order for the balance due of \$4,146.84. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$4,146.84.

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: May 18, 2012.

---

Residential Tenancy Branch