

## **Interim Decision**

### **Dispute Codes**

MND MNR MNSD MNDC FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is a Reconvened Hearing from April 15, 2009, at which time the Landlord withdrew her application against the co-tenant and was granted an Order of Substituted Service upon the Tenant. The Hearing was reconvened to hear the Landlord’s application for Monetary Order for unpaid rent and damages to the rental unit; to keep all of the security deposit; and to recover the filing fee from the Tenant for the cost of the application.

I reviewed the evidence provided by the Landlord prior to the Hearing. Both parties were represented at the hearing and were provided the opportunity to be heard and respond to the other party’s submissions. The parties gave affirmed testimony at the Hearing and the Hearing proceeded on its merits.

### **Background and Evidence**

**The Landlord submitted the following evidence and oral testimony:**

- The Landlord served the Tenant with the Notice of Reconvened Hearing documents, along with a copy of the Interim Decision dated April 15, 2009; a copy of the Order for substituted service; the amended Application for Dispute Resolution; and copies of the Landlord’s evidence. Service was affected by registered mail to the address stipulated in the Order for substituted service, on April 24, 2009. The Landlord provided a tracking

number for the registered mail documents. The Tenant signed for the registered mail documents on April 28, 2009.

- The tenancy started on October 14, 2008 and ended when the Tenant and co-tenant moved out of the rental unit in February, 2009, as a result of two Notices to End Tenancy. The first Notice was a 2 month Notice to End Tenancy for Cause, issued January 9, 2009. The second Notice was a 10 day Notice to End Tenancy for Unpaid Rent or Utilities, issued February 6, 2009.
- The rental unit was in new condition when the Tenant and co-tenant moved in.
- Monthly rent for the rental unit was \$1,450.00, due on the first day of each month. The Tenant and co-tenant paid a security deposit in the amount of \$725.00 on October 13, 2009. There was no move-in or move-out inspection done by the Landlord.
- The Tenant and co-tenant did not pay rent for the month of February, 2009, in the amount of \$1,450.00.
- The Tenant and co-tenant did not clean the apartment before vacating the rental unit. The Landlord incurred costs of \$350.00 to have the rental unit cleaned.
- The Tenant and co-tenant left garbage and personal belongings behind, which the Landlord had to remove, at a cost of \$250.00.
- The Tenant and co-tenant did not shampoo the carpets before leaving, and the Landlord paid \$150.00 to have the carpets cleaned.
- The Tenant and co-tenant scratched the front door of the rental unit. The Landlord paid \$150.00 to repaint the door and replace the lock.

- The Tenant and co-tenant damaged the toilet, by flushing a tube of toothpaste down the toilet, costing the Landlord \$50.00 to repair.
- The Tenant and co-tenant damaged the garburator, by flushing a glass bottle, beer cap, and plastic bag, costing the Landlord \$90.00 to repair.
- The Tenant and co-tenant damaged the granite counter top in the kitchen, by staining it badly. The Landlord attempted to clean and repair the granite counter top, but the stain would not come out and the Landlord had to replace it at a cost of \$600.00.
- The Tenant and co-tenant damaged the walls in the rental unit, and cost the Landlord \$100.00 to patch and paint the walls.

The Landlord provided the following documents in support of her claim:

- 14 photographs of the rental unit;
- a copy of a receipt dated February 17, 2009, in the amount of \$150.00 for “carpet cleaning”;
- a copy of a receipt dated February 16, 2009, in the amount of \$1,590.00 plus GST, for a total of \$1,669.50, representing the remainder of the Landlord’s claim for damages.

The Tenant submitted the following oral testimony:

- The Tenant admitted service of the Notice to End Tenancy dated January 9, 2009. The Tenant stated that the co-tenant was the one who gave the monthly rent cheques to the Landlord, and that the co-tenant had cancelled the February, 2009 cheque. The Tenant did not dispute that the Landlord was owed rent for the month of February.
- The Tenant denied damaging the front door of the rental unit.

- The Tenant admitted that there was garbage and abandoned items at the rental unit, but stated the items were left by the co-tenant.
- The Tenant denied putting anything damaging down the garburator. He stated that a bottle cap might have fallen into the sink and made its way to the garburator, but that the Tenant and co-tenant did not purposely put anything down the garburator. The Tenant stated that the garburator was new, with a two year warrantee, and disputed the \$90.00 fee the Landlord was claiming.
- The Tenant questioned the cost of removing the toothpaste tube from the toilet bowl.
- The Tenant admitted that he and the co-tenant were responsible for staining the granite counter top in the kitchen with grease from a grill.
- The Tenant denied that the walls were damaged, other than normal wear and tear. He stated that the Tenants left some small dints in the wall, but nothing out of the ordinary.
- The Tenant agreed that there were some small spots on the carpet, but stated that he had cleaned the spots to the best of his ability before they moved out.
- The Tenant stated that he had received copies of the Landlord's photographs, but did not receive copies of the receipts.
- The Tenant stated that the amount claimed for dump fees was high. The Tenant stated that he checked websites for going rates, and the highest he could find for the amount that was left behind was \$150.00.

The Landlord gave the following testimony in response to the Tenant's testimony:

- The Landlord stated that the smell in the unit was bad from the rotting garbage, and that she just wanted to get everything fixed and taken care

of as quickly as possible. She did not attempt to have the garburator fixed under warrantee and called a handyman to fix all of the problems.

- The Landlord stated that she removed the tube of toothpaste from the toilet bowl easily because it was not blocking the toilet, but that the toilet was flushing slowly. The handyman used a snake to clear the toilet and charged \$50.00.
- The Landlord agreed that the Tenants had left only small holes and scratches on the walls.
- The Landlord insisted that she had served the Tenant with copies of the receipts as well as the remainder of the evidence.

### Analysis

I accept the Landlord's testimony that she mailed the Tenant copies of documents, in accordance with the substituted service Order, by registered mail on April 24, 2009.

The Tenant testified that the co-tenant was responsible for leaving the garbage and personal items behind, and for cancelling the February rent payment, suggesting that the Tenant should not be held responsible for the co-tenant's actions. Tenants are jointly and severally responsible for debts and damages incurred over the term of the tenancy. This means that the Landlord can recover the full amount of rent, utilities and damages from both or any one of the tenants. The responsibility falls to the tenants to apportion between themselves the amount owing to the Landlord.

The Landlord is entitled to her monetary claim for February rent in the amount of \$1,450.00.

I can not distinguish any damage to the front door from the photograph provided by the Landlord. The Tenant has denied damaging the front door. Therefore, I dismiss the Landlord's claim with respect to the damage to the front door in the amount of \$150.00.

Based on the testimony and evidence of both parties, I do not find that the Tenant damaged the toilet. I dismiss the Landlord's claim in the amount of \$50.00 for repairing the toilet.

The Landlord testified that the rental unit was in new condition when the Tenants moved in. However, there was no move-in condition report done, in accordance with the Act, to support her claim with respect to the damage to the walls. Small nail holes and minor defects are normal wear and tear. I dismiss the Landlord's claim in the amount of \$100.00 for touch up and painting the wall.

With respect to the Landlord's claim for cleaning the suite, I have considered the photographic evidence and find the amount claimed by the Landlord to be excessive. There is no break-down on the invoice provided which would indicate how many hours were spent cleaning the rental unit, or at what hourly rate.

There is some evidence in the photographs (i.e. garbage bags in the entryway and bedroom, debris under the kitchen sink) that would suggest some cleaning had to be done. However, the Landlord has failed to prove the amount claimed. I allow a nominal amount of \$80.00 for cleaning (4 hours at \$20.00 per hour).

Based on the testimony and evidence of both parties, the Landlord has failed to prove her claim for damages in the amount of \$90.00 for repairing the garburator. I dismiss this portion of the Landlord's claim.

It is clear from the photographic evidence that the Tenants abandoned a number of household items, including: four chairs; a television; a games table; a large skateboard; brief cases; boots; a vacuum cleaner; and other small items. The

Tenants also left 6 large black garbage bags full of garbage and some small boxes of garbage in the rental unit. The rental unit is on the 4<sup>th</sup> floor of a building. I find the Landlord's claim in the amount of \$250.00 for removal of the items from the Tenant's suite, and for disposing of the items, to be reasonable. I allow this portion of the Landlord's claim.

The Tenants lived in the rental unit for approximately 2 ½ months. The Tenant testified that he cleaned the carpet after the accidental spill. There was no evidence that the Tenants had a pet or were smoking in the rental unit, and therefore the Tenants were not required to shampoo the carpets before vacating the unit. I dismiss this portion of the Landlord's claim.

The Tenant agreed that the granite countertop was damaged through the negligence of the Tenants. The rental unit was new when the Tenants moved in, and therefore I have not allowed for depreciation of the original granite. I allow this portion of the Landlord's claim in the amount of \$600.00.

Based on the evidence and oral testimony of both parties, I find that the Landlord is entitled to a monetary claim against the Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit. The Landlord has been successful in her Application and is entitled to recover the filing fee from the Tenant. The Landlord has established a Monetary Order, as follows:

Unpaid Rent for February, 2009	\$1,450.00
Cleaning the rental unit	80.00
Replacing the granite countertop	\$600.00
Removal and disposal of garbage and abandoned items	\$250.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$2,430.00</b>
Less Security Deposit of \$725.00 plus interest of \$2.38	-\$727.38
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,702.62</b>

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim in the amount of \$1,702.62 against the Tenant. The Monetary Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated: May 28, 2009.

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