DECISION

Dispute Codes:

Landlord: MND, MNSD and FF

Tenant: MNSD

Introduction

These applications were brought by both the landlord and the tenant.

By application of November 16, 2010, the landlord seeks a Monetary Order in compensation for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain security and pet damage deposits in set off.

By prior application of October 29, 2010, the tenant seeks return of her security and pet damage deposits in double on the grounds that the landlord did not return them within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

As a matter of note, I have amended the style of cause with consent of both parties by way of removing the landlord's personal name as the rental agreement was between the tenant and the landlord's numbered company.

Issues to be Decided

This matter requires a decision on which of the parties in entitled to the security and pet damage deposits, taking into account whether the landlord remains eligible to claim on them. In addition, it requires a decision on whether damages are proven, attributable to the tenant, reasonable and proven as to amount claimed and whether the landlord has acted reasonably to minimize any loss.

Background, Evidence and Analysis

This tenancy began on December 1, 2007 and ended on August 31, 2010. Rent was $1,300 per month and the landlord holds security of $650 and pet damage deposit of $200, both paid on or about November 28, 2007.

Tenant's application

The tenant makes claim for return of her deposits under section 38 of the *Act* which provides that a landlord must either return the deposits within 15 days of the latter the end of the tenancy or receipt of the tenant's forwarding address in writing or be compelled to return them in double.

The tenant stated that she had dropped the written forwarding address off on September 15, 2010 but she had not submitted a copy of it into evidence. The landlord stated that he had not received the tenant's forwarding address until he was served with the Notice of Hearing based on her application on November 3, 2010. When he received the address, he prepared to make the application that he filed on November 16, 2010, a date within the 15-day limit set at section 38(1) of the *Act*.

The tenant stated that she had a copy of the letter she had delivered to the landlord on September 15, 2010, but that she had not had time to submit it into evidence because the landlord had provided her with additional evidence shortly before the hearing.

Taking into account that the tenant's application dealt only with the deposits and it was made two months following the end of the tenancy and three months in advance of the hearing, I find that the tenant had adequate time to provide proof of service of the forwarding address. In addition, given that the landlord had substantial claims in damages, I find on the balance of probabilities that he would have made his application shortly after receiving the tenant's forwarding address.

Therefore, I find that the landlord's application was made on time to claim on the deposits, the deposits remain available to claim by the landlord and the tenant's application is dismissed.

Landlord's application

During, the hearing, by way of background, the landlord gave evidence that he had tried to be considerate of the tenant, permitting her to move in a month before his preferred start date, constructing a fence and gate at the tenant's request to accommodate her dog, and buying a lawn mower for the rental unit, for example.

The tenant's written submission noted that she had suffered a severe and continuing income shortage at the end of the tenancy and had spent the first week following it sleeping in her car.

The parties concurred that the tenant had, on August 2, 2010, given verbal notice to end the tenancy on August 31, 2010. At the landlord's request, the tenant provided the notice in writing on August 16, 2010. It is essential that the landlord have the notice in writing so he could lawfully offer the unit for rent for September 1, 2010 and minimize potential losses for the benefit of both parties.

As matters turned out, the landlord was able to get new tenants for September 1, 2010.

The landlord submitted photographs and/or statements and receipts in support of a number of claims for damages on which I find as follows:

Replacement of keys - $15. The parties disagree on whether the tenant had returned three keys for the rental unit. I find the testimony of the landlord to be more credible on the matter given that his memory was tied to the event of having new keys cut and of having to use his only pass key to gain entry. The claim is allowed.

Cleaning - $300. The landlord stated that, given the short time change over and the poor condition in which the rental unit was left and as verified by a written submission from the new tenants, the landlord had given them a $300 discount on the first month's rent in exchange for their cleaning the rental unit. Also taking into account the landlord's photographs taken at the end of the tenancy, this claim is allowed in full.

Carpet cleaning - $156.80. On the basis of photographic evidence and the submitted receipt, this claim is allowed in full.

Carpet replacement - $1,293.80. The landlord submitted numerous photographs showing severe staining of the carpets in the rental unit that could not be removed with cleaning along with a written estimate for their replacement cost of $2,587.76, twice the claimed amount. As the landlord had purchased the rental building shortly before the tenancy began, he could not be certain as to the age of the carpets. He estimated they were approximately eight years old and the tenant believed they were three years old.

As the claimant-landlord's estimate provides the greater benefit for the tenant, I accept that as the more accurate. In discussing this claim, the tenant conceded that her pet dog, since passed, had experienced some incontinence during the tenancy. As the carpets have not yet been replaced, I will award the landlord $500 for diminishment of their value.

Lawn mower replacement - $300. The landlord stated that he had purchased a lawn mower for the tenant which was missing at the end of the tenancy. The parties concurred that the apparent theft of the mower had been reported to the landlord in the spring or early summer in which the tenancy ended.

The landlord held the tenant accountable as he said she had at times left it sitting outside of the back yard area which he had fenced for her. The tenant said it was more often put in the fenced yard but that there was no lockable tool shed making it more vulnerable. In the absence of conclusive proof, I must grant the benefit of the doubt to the tenant. This claim is dismissed.

Filing fee - $50. As the landlord's application has succeeded on it s merits, I find that he is entitled to recover the filing fee for this proceeding from the tenant.

Security and pet damage deposit – ($850). Having found that the security deposit of $650 and the pet damage deposit of $200 remain available for claim by the landlord, I hereby authorize and order that the landlord may retain them with accumulated interest in set off against the balance owed to him.

Including authorization for him to retain the deposits and to recover the filing fee for this proceeding, I find that the tenant owes to the landlord an amount calculated as follows:

Replacement of keys	$ 15.00

Cleaning rent reduction for new tenants	300.00
Carpet cleaning	156.80
Diminished value of carpets	500.00
Filing fee	50.00
Sub total	$1,021.80
Less security and pet damage deposits	- 850.00
Interest (November 28, 2007 to date)	- 13.96
TOTAL	**$ 157.84**

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **$157.84** for service on the tenant.

March 4, 2011