

## **DECISION**

**Dispute Codes:** MND, MNR, MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlord on May 12, 2011 seeking a Monetary Order for damage to the rental unit, unpaid rent/loss of rent, recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on May 12, 2011, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for the damages and losses claimed taking into account whether damages are proven, attributable to the tenant, reasonable as to remediation costs, and whether the landlord has taken reasonable steps to minimize the losses claimed. Damage awards are also considered against reasonable wear and tear and depreciation and the burden of proof lies with the claimant.

### **Background, Evidence and Analysis**

This tenancy began on December 1, 2008 and ended on October 31, 2010 when the tenant vacated without notice and without providing a forwarding address or participating in a move out condition inspection. Rent was \$1,095 per month and the landlord holds a security deposit of \$547.50 paid on December 1, 2008.

The landlord submits claims for damage to the rental unit , evidenced by receipts, extensive before and after photographs, and an attending witness who had seen the rental unit before and following the tenancy and during the repair period. The landlord and witness gave evidence that the rental unit was in pristine condition prior to the tenancy. The move-in condition inspection report signed by the tenant bears the notation, "Everything in good order," in the section indicating repairs to be completed at the start of the tenancy.

The landlord also submitted copies of two warning letters to the tenant dated July 12 and September 12, 2010. The first specified, the tenant's dog barking and disturbing neighbours and digging holes in the yard, rocks thrown in the yards of neighbours and the rental unit jeopardizing lawn mowing, loud music and conversations at late hours, and smoking under the upper unit's window. The second letter referred to general disturbance, adverse effects on quiet enjoyment, jeopardizing lawful rights and having an additional occupant without consent,

During the hearing, the landlord gave detailed evidence on each of the claims on which I find as follows:

**Unpaid rent/loss of rent - \$1,095.** On evidence that the tenant vacated on October 31, 2010 without notice, leaving the rental unit in need of extensive cleaning and repairs, I find that the landlord had no reasonable chance to find a new tenant for November 2010. Therefore, this claim is allowed in full.

**General cleaning - \$1,215.** While this claim seems higher than average for general cleaning, extraordinary circumstances such as urine on walls and floors, supported by photographic and witness evidence leaves little doubt that the 40.5 hours at \$30 per hour claimed by the landlord was necessary. This claim is allowed in full.

**Painting - \$1,500.** While the landlord did this work himself, he has based the amount of the claim on the lower of two professional estimates, one for \$2,195.20 and the other for

\$1,500. Given the apparent excellent condition of the paint at the beginning of the tenancy, and given that the landlord was left no choice but to repaint by the severe odours left by urine on the walls, I attribute 20 per cent of this claim to normal wear and tear and find the tenant responsible for \$1,200 of the cost.

**Replacement of carpets - \$1,775.75.** The landlord has submitted a receipt for the replacement cost of carpeting and underlay, the lower of two estimates, the other of which was for \$2,648. As with the painting, I find that the landlord has demonstrated a clear effort to minimize his losses as required under section 7(b) of the *Act*. Again, I accept the evidence of the landlord and the witness that the carpets were in excellent condition at the beginning of the tenancy and replacement was necessitated by damage done by the tenant. I will allow 20 per cent depreciation for normal wear and tear and find the tenant is responsible for \$1,420.60 of the replacement costs.

**Filing fee - \$50.** Having found that the application has succeeded on its merits, I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant.

**Security deposit – (\$547.50).** As authorized under section 72 of the *Act*, I find that the landlord is entitled to retain the security deposit of \$547.50 in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Unpaid rent/loss of rent	\$1,095.00
General cleaning	1,215.00
Painting	1,200.00
Replace carpets	1,420.60
Filing fee	50.00
Sub total	\$4,980.60
Less retained security and pet damage deposits	- 547.50
Less interest (December 1, 2008 to date)	- .70
<b>TOTAL</b>	<b>\$4,432.40</b>

## Conclusion

In addition to authorization to retain the tenant's security and pet damage deposits, in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$4,432.40**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

August 22, 2011