DECISION

Dispute Codes: Landlord: MNR, MNDC, MND, MNSD and FF
Tenant: MNDC, MNSD, and FF

Introduction

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

By application of June 13, 2011, the landlord seeks a Monetary Order for unpaid rent/loss of rent and utilities, and damage to the rental unit, after the tenant left a fixed term agreement early. The landlord also seeks to recover his filing fee for this proceeding and authorization to retain the security deposit and pet damage deposits in set of against the balance owed.

By application of July 4, 2011, the tenant seeks a monetary award for an over charge for utilities, compensation for a piano left at the rental unit and disposed of by the landlord, return of her security and pet damage deposits in double and recovery of the filing fee for this proceeding.

Those claims which are overlapping are addressed in the section dealing with the landlord's application.

Issues to be Decided

This application requires a decision on whether either or both parties are entitled to monetary awards for the claims submitted and disposition of the security deposit.

Background, Evidence and Analysis

This tenancy began on December 9, 2010. Rent was $1,300 per month and the landlord holds a security deposit of $650 and a pet damage deposit of $350.

The tenant vacated the rental unit on or about May 16, 2011 without having given notice.

The landlord submitted into evidence a copy of a fixed term rental agreement set to end on June 30, 2011, but the tenant claims she had never signed the agreement and submits that the tenancy was month to month.

Landlord's claims

During the hearing, the landlord put forward his claims on which I find as follows:

Unpaid rent/loss of rent - $2,600. The landlord gave evidence that the tenant had vacated the rental unit in mid May 2011 without having paid the rent for the month and without giving notice. The tenant stated that she had left the tenancy out of fear for her safety and that of her children as the landlord had threatened her. However, those threats quoted in the tenant's written submission appear to constitute reasonable words of caution to the tenant after the landlord had been advised by other tenants and neighbours that she was moving out of the rental unit. I find the landlord's accounting that he was simply reminding the tenant of her liability under the rental agreement and the *Act* to be the more credible interpretation of the comments.

Section 45 of the *Act* provides that a tenant may end a month to month tenancy by giving written notice at least one full month in advance and such notice must be given on a day before rent is due. In a fixed term agreement, the effective date of the notice cannot be earlier than the end of tenancy date set by the agreement. In the present matter, if notice had been given in the month the tenant vacated, the effective date could have been no sooner than June 30, 2011 whether the tenancy was for a fixed term or month to month. Therefore, I find it not necessary to make a determination on the question of whether the tenancy was for a fixed term or otherwise.

The landlord gave evidence that he had returned from an extended trip toward the end of the tenancy and that he had moved into the rental unit himself on June 9, 2011 to minimize his losses as required under section 7 of the Act.

Therefore, I find that the tenant is responsible for the $1,300 full rent for May 2011 and for eight days per diem rent for June calculated as $341.92 ($1,300 x 12/365 x 8).

Unpaid hydro - $447.86 + $87.62 = $535.48. The landlord gave evidence that the tenant left an unpaid hydro bill of $447.86. While the account was in the tenant's name, the landlord gave evidence that any arrears would be applied to his municipal tax bill and he claimed an additional $86.62 that had already been added to his tax bill for the previous period due to the tenant's arrears.

The tenant stated that she had not paid the hydro bill as she had learned after the tenancy began that there was another rental unit at the back of the building on the same meter. The landlord was surprised to learn the tenant was unaware of the other unit, but had advised his agent by email that the billing was to be apportioned between the two units. During the hearing, the parties agreed to 60/40 split would be reasonable as the other unit was small and had a single occupant and the subject tenant had the larger unit and two children. Therefore, I find that the subject tenant owes the landlord 60 percent of the $535.48, calculated as $321.29.

Unpaid gas Bill. The landlord claims a large gas bill left unpaid at the end of the tenancy and the parties discussed the apportionment of it between the rental units. However, the landlord did not claim this item on the original application and has since neither amended his application nor submitted documentary evidence in support of the claim. Therefore, I am dismissing this part of the landlord's claim with leave to reapply.

Damage to concrete walk - $1,000. The landlord submits that a moulded concrete walk with three coats of sealer was damaged by the apparent application of caustic chemicals. The tenant denies any knowledge of any such substances having been applied to the walk. In the absence of proof that this damage was caused by the tenant, the claim is dismissed.

Washing machine service call - $89.60. The landlord claims compensation for a service call after the tenant complained that the washer was not working.
The landlord submitted a copy of the bill on which the service provider had noted that no repairs were necessary and attributed problems to operator error. According to the

landlord, the unit was not and had never been connected to the hot water supply, although the tenant did not recall his instruction to that effect.

Given that the landlord's agent, his son, might have detected and corrected the problem without calling commercial service provider, I find that the tenant should not be responsible for this claim and it is dismissed.

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

Security and pet damage deposits – ($650 + $350 = $1,000). The deposits are overlapping claims, the landlord seeking to retain them in set off against the balance owed to him and the tenant seeking their return in double on the grounds that they were not returned within 15 days of the end of the tenancy or provision of the tenant's forwarding address as per section 38(1) and (6) of the *Act.*

The tenant also submits that as the landlord did not appear for the move-out inspection, he cannot claim on the deposit. However, the landlord claims that his agent awaited the tenant for a full hour at the scheduled time for the inspection and the tenant failed to appear. In any event, the move-out inspection report would be applicable in a claim for damage to the renal unit only.

Having found that the tenant had failed to give proper notice to end the tenancy and that the earliest possible effective date would have been June 30, 2011 and given that the landlord applied on July 4, 2011, I find that the deposits are still available to the landlord. Therefore, as authorized by section 72 of the *Act,* I find that the landlord shall retain the deposits in set off.

Tenant's remaining claims

Compensation for piano - $500. The parties concurred that the tenant had left behind an upright piano when she moved out of the rental unit. The landlord stated that he had

tried unsuccessfully to contact the tenant to see to its removal. When he had not heard from the tenant, he had his sister, a pianist and music teacher, look at the instrument. She advised that the keys would not rebound when pressed and that the piano was of little or no value. The landlord was able to find a salvage operator company to take it away at no charge to him so he withdrew an initial claim of $100 for the cost of disposing of it.

Regulation 25(2) under Act permits a landlord to dispose of abandoned goods in circumstances in which "the cost of removing, storing and selling the property would be more than the proceeds of its sale." I find that the landlord had reasonable grounds to arrive at that conclusion and the tenant's claim for compensation is dismissed.

Loss of use of washer – unspecified. The tenant claimed an unspecified amount for loss of the use of the washing machine. Having denied the landlord's claim for the service call, and taking into account the service provider's conclusion that there was nothing wrong with the machine, in addition to the landlord's testimony that he has used the machine a number of times without problems, I make no award on this claim.

Therefore, I find that the tenant's application is dismissed in its entirety.

Thus, I find that accounts balance as follows:

Award to landlord		
Rent for May 2011	$1,300.00	
Per diem 8 days rent for June 2011	341.92	
Unpaid hydro - 60% of $535.48	321.29	
Filing fee	50.00	
Sub total	$2,013.21	$2,013.21
Less tenant's credits		
Security deposit (No interest due)	$ 650.00	
Pet damage deposit (No interest due)	350.00	
Sub total	$1,000.00	- 1,000.00
TOTAL balance owed to landlord by tenant		**$1,013.21**

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 **$1,013.21** enforceable through the Provincial Court of British Columbia, for service on the tenant.

September 13, 2011