



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

This application was brought by the landlord on February 27, 2012 seeking a monetary award for unpaid rent and utilities, loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposits in set off against the balanced owed.

As a matter of note, this matter was set for hearing on April 16, 2012 but was adjourned when the applicant's evidence could not be located. It was adjourned again on May 31, 2012 when the applicant reported she had been unable to locate and serve the respondent with the reconvening Notice of Hearing.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy initially began on July 1, 2008 and ended on May 31, 2011. Rent was \$1,500 per month and the landlord holds a security deposit of \$750 paid at the beginning of the tenancy.

During the hearing, the tenant submitted that throughout the tenancy, she had shared the rental unit with four other parties at various times, selected by her, and that some of the damage claimed had been caused by the other parties. She stated that she had won a Small Claim Court judgement against one of her co-tenants for \$750 that had not yet been paid but that she fully intended to turn over to the landlord.

The landlord submitted a number of receipts and photographs in support of her claims, but I would note that the landlord is at somewhat of a disadvantage by not having submitted move-in and move-out condition inspection reports for comparison purposes.

The landlord claims and I find as follows:

Rent shortfall for April 2011 - \$500. The tenant acknowledged the rent shortfall for April 2011 but stated that it resulted from her roommate's failure to pay her. She stated that the landlord had signed an "Intent to Rent" form for the co-tenant. I find that cannot relieve the attending tenant of her duty under the rental agreement and the obligations of joint and several liability of co-tenants. In addition, the landlord submitted a copy of an NSF cheque for the \$500 in question signed by the respondent. This claim is allowed.

Rent for May 2011 - \$1,500. The tenant conceded that she lived in the rental unit through May of 2011 and did not pay rent. This claim is allowed.

Loss of rent for June 2011 - \$1,500. The landlord relied on photographic evidence and repair bills in support of the claim that it would not have been possible to prepare the rental unit for new tenants for June. This claim is allowed.

Painting and refuse removal - \$3,000. The landlord has submitted an invoice from a service provider and photographic evidence showing graffiti painted in stark colors on the walls and a number of holes in the walls requiring repair. Taking into account that the tenancy lasted three years vs the four-year useful life of interior paint and the presence of the graffiti compelling the repainting, I allow \$2,250 on this claim.

Carpet replacement, - \$3,165.78. This claim includes HST for replacement of 152 yards of carpet ruined by pet soiling which the tenant said resulted from one of her co-tenants. The landlord gave uncontested evidence that the carpeting was new at the beginning of the tenancy.

As standard depreciation tables place the useful life of carpeting at 10 years, I allow for three years depreciation and award the landlord 70 per cent of the claim at \$2,216.05.

Repair doors, broken window - \$666.96. The carpet replacement invoice includes an additional \$595.50 (\$666.96 with HST) for repair of a broken window and three doors left with several holes in them. This claim is allowed in full.

Hydro - \$599.10. The landlord, supported by receipt, based this claim on unpaid hydro to May 27, 2011. The claim is allowed in full.

Filing fee - \$100. 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 deposits – (\$750 + \$5.66 interest + \$756.66). As authorized by section 72(2)(b) of the *Act*, I order that the landlord retain the deposit and interest in set off against the balance owed.

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

Rent shortfall for April 2011	\$ 500.00
Loss of rent for June 2011	1,500.00
Painting and refuse removal	2,250.00
Carpet replacement	2,216.05
Repair doors, broken window	666.96
Hydro	599.10
Filing fee	<u>100.00</u>
Sub total	\$9,332.11
Less retained security deposits and interest from July 2008 to date	<u>- 756.66</u>
TOTAL	\$8,575.45

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$8,575.45**, enforceable through the Provincial Court of British Columbia, for service on the tenant. It is open to the tenant to bring actions through the Court to seek to recover from her co-tenants those amounts for which she believes they are responsible.

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: July 03, 2012.

Residential Tenancy Branch