



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for unpaid rent and loss of rent, and filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order, the amount, and if the filing fee should be included and whether the security deposit may be retained against any balance owed.

Background and Evidence

This tenancy began August 4, 2008 under a fixed term agreement set to expire August 4, 2009. Rent was \$1,400 per month and the landlord holds a security deposit of \$1000 paid August 4, 2008. (The landlord was advised during the hearing that a security deposit may only be for a maximum of one-half month's rent.)

The rental unit is in a new building completed in July of 2008.

During the hearing, the parties gave evidence that the tenant had given the landlord tenant's notice to end tenancy by letter of November 28, 2008. The letter gave notice for January 4, 2009 and cited concerns about the water supply as cause for ending the tenancy.

The landlord gave evidence that, on being notified of the tenant's concerns in November, he immediately contacted the contractor who attended the rental unit and was able to find no issues with the water. When the tenant raised the issue again, the landlord attended with the contractor who gave assurance that the slight discoloration was the result of mineralization and there was no cause for health concerns. He said no other residents of the building had expressed concern.

The landlord further stated that, if the tenant had requested a water filter be installed, he would readily have done so.

As he was concerned about the over payment of the security deposit, and knowing that the tenancy was ending, the tenant paid only \$400 of the December rent on December 4, 2008 and a further \$700 on January 4, 2009, a total of \$1100 of the December rent. The landlord has returned the cheques and had issued a Notice to End Tenancy for unpaid rent on December 9, 2008.

The landlord gave evidence that he had begun advertising for new tenants in early December but at the time of the hearing had not been able to find a new tenant.

Therefore, the landlord seeks a monetary for the unpaid rent for December 2008 and for loss of rent for January 2009.

Analysis

A fixed term rental agreement is a binding contract intended to give both landlords and tenants assurance that they will not have to incur the inconvenience and costs of moving or finding new tenants for an agreed period.

While section 45(3) of the *Act* makes provision for a tenant to end a fixed term tenancy earlier where a landlord can be proven to have breached a material term of the agreement, I do not find such proof in the present case.

For example, the tenant did not consult and has not provided verification from a qualified professional to substantiate the claim that there was something wrong with the water. The landlord consulted the contractors and was reassured that there was no problem.

In addition, there are mechanisms available to the tenant whereby he could have applied for return of the security deposit overpayment if the landlord refused to return it on request. However, the tenant was not in a position in which he could lawfully withhold rent, resulting in the Notice to End Tenancy.

Accordingly, I find that the landlord is entitled to a Monetary Order for the December rent, loss of rent for January and the filing fee for January and authorization to retain the security deposit in set off as follows:

December rent	\$1,400.00
January loss of rent	1,400.00
Filing fee	50.00
Subtotal	\$2,850.00
Less retained security deposit	- 1,000.00
Less interest (August 4, 2008 to date)	- 6.15
TOTAL	\$1,843.85

Conclusion

Thus, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,843.85 for service on the tenant.

January 16, 2009

Dispute Resolution Officer