



Dispute Resolution Services

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

Decision

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications.

The Landlord made application for a monetary Order or money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant has made application for the return of their security deposit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. It is clear from the documents submitted with the Application that the Tenant also wished to apply for a monetary Order or money owed or compensation for damage or loss, and her application has been amended accordingly

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for loss of revenue for December of 2008 and January of 2009; whether the Tenant is entitled to the return of her security deposit; whether the Tenant is entitled to a monetary Order for compensation for moving costs; and whether either party is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the parties entered into a tenancy agreement that was supposed to begin on December 01, 2008, that the Tenants were supposed to pay monthly rent of \$700.00, and that the Tenants paid a security deposit of \$350. 00 on November 14, 2008

The Landlord stated they received a report of bed bugs in an adjacent unit to this rental unit on November 29, 2008. He stated that the infected unit and this rental unit were treated for bed bugs by a professional pest control company, on November 30, 2008, at which time no bugs were detected in the Tenant's rental unit.

The Landlord stated that the Tenants were advised of the bed bug treatment when she began moving her property into the rental unit on December 02, 2008. The Landlord stated that the Tenants were advised that the treatment was safe. The Landlord stated that the Tenants reported that they were familiar with bed bugs and that they would return on December 03, 2008 to pay the rent.

The Tenant stated that she met with the Agent for the Landlord after she had moved most of her furniture into the rental unit on December 01, 2008. She stated that the Agent advised her that she would return the security deposit and that the Tenants did not need to move into the rental unit if they were uncomfortable with the situation. She stated that most of the property had been moved into the rental unit by the time they learned about the bed bugs, and that it was very late, so they returned their rented truck with the intention of renting another truck on December 02, 2008. She stated that she verbally advised the Agent for the Landlord that they did not intend to move into the rental unit and that she would return to retrieve her property. She stated that she was unable to rent another truck until December 05, 2008, at which time she retrieved all of her property from the rental unit.

The Tenant submitted a receipt from Budget that shows the truck was rented on December 01, 2008 at 4:47 p.m. and was not due to be returned until December 02, 2008 at 3:00 p.m. This evidence does not help to establish whether the Tenant moved property in on December 01, 2008 or December 02, 2008, however I do not find this date to be particularly relevant to this issue.

The Agent for the Landlord was called as a witness after the Tenant gave her evidence regarding the conversation on December 01, 2008. The Agent stated that she assured the Tenant that the treatment was safe and that she never advised the Tenant that she was not required to move into the rental unit.

The Landlord is seeking compensation, in the amount of \$700.00, for unpaid rent from December of 2008. The Landlord is also seeking compensation for loss of revenue from January of 2009. The Landlord stated that he began advertising the rental unit on December 07, 2008 but was unable to find new tenants until February 01, 2009.

The Tenant is seeking compensation, in the amount of \$200.00, for compensation for moving costs.

Analysis

The evidence shows that the Landlord and the Tenants entered into a tenancy agreement for a tenancy that was to begin on December 01, 2008. The evidence shows that the Tenants took possession of the rental unit on December 01, 2008 or December 02, 2008, and that they retained possession of the rental unit until December 05, 2008.

I find that this tenancy ended on December 05, 2008 when the Tenants abandoned the rental unit. The evidence shows that the Tenants abandoned the rental unit because they were concerned that a recent bed bug treatment rendered the rental unit unsafe. The Tenants submitted no evidence to establish that the rental unit was not safe for occupation, and I cannot conclude that the tenancy had been frustrated by the recent treatment.

I find that the Tenant failed to comply with section 45 of the *Act* when they failed to give the Landlord one full month's notice, in writing, of their intent to end the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*.

In these circumstances, I find that the Tenants must pay rent for December of 2008, as they did not pay the rent that was due and their inadequate notice prevented the Landlord from finding new tenants for that month.

I am not satisfied that the lack of notice prevented the Landlord from finding new tenants for January of 2009. In reaching this conclusion I was strongly influenced by the fact the Landlord had almost an entire month to find a new tenant which, in the current rental market, is generally adequate to find new tenants. On this basis, I dismiss the Landlord's application for compensation for loss of revenue from January.

I find that the Landlord acted responsibly when they had the Tenant's rental unit treated by a professional pest control company and that the Tenant has not established that the Landlord contravened the *Act* in regards to this tenancy. As there is no evidence that this tenancy failed because the Landlord contravened the *Act*, I hereby dismiss the Tenant's application for compensation for moving costs associated to the end of this tenancy.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Tenant's application is without merit, and I dismiss the Tenant's application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$750.00, which is comprised on \$700.00 in unpaid rent from December of 2008 and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I hereby authorize the Landlord to retain the Tenant's security deposit plus interest, in the amount of \$350.69, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$399.31. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: January 27, 2009.