



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlord’s application for a Monetary Order for liquidated damages and lost rent, to keep the security deposit paid by the Tenant, and to recover the filing fee from the Tenant for the cost of the application.

- (1) Is the Landlord entitled to a monetary order?
- (2) Is the Landlord entitled to recover the filing fee from the Tenant?

Background and Evidence

The tenancy started on October 1, 2008. It was a fixed term lease, expiring on September 30, 2009. The Tenant paid a security deposit in the amount of \$700.00 on September 8, 2009, and a pet deposit in the amount of \$700.00 on September 9, 2009. Monthly rent was \$1,395.00, payable on the first day of the month.

Landlord's evidence

The Landlord testified that the Tenant notified the Landlord in January, 2009, that she was unhappy living in the rental unit and wanted to break the Lease. The Landlord stated that the Tenant did not provide written notice that she was ending the tenancy, and that it was all done over the telephone. The Landlord testified that the Tenant was warned that she would be liable for liquidated damages and lost rent if she ended the tenancy early.

The Landlord testified that the rental unit was re-rented on February 1, 2009, but at a reduced rent of \$1,050.00 per month. The new tenant signed a six month lease, with an expiry date of July 31, 2009. The Landlord stated that the Tenancy Agreement provided for the sum of \$700.00 to be paid to the Landlord by the Tenant in the event the Tenant ended the tenancy prior to the end of the term. The Landlord stated that, upon reflection, the amount they were asking for liquidated damages is \$424.50, which more accurately captures the cost to the Landlord of re-renting the rental unit. The Landlord stated that the rental unit was very clean and undamaged when the Tenant moved out and that the Tenant was an excellent tenant.

The Landlord asked for liquidated damages in the amount of \$424.50 plus \$2,070.00, which is the difference between the rent that the Tenant would have paid and what the new tenant is paying, to and including July 31, 2009.

Tenant's evidence

The Tenant testified that she telephoned the Landlord's agent on January 5, 2009, to complain about her living conditions. She stated that the rental property was full of college students who had frequent loud parties; left garbage in the common areas; wrote obscenities in the elevator; and damaged her car. The Tenant stated that the Landlord offered to reduce her rent. The Tenant stated that she advised the Landlord that she would prefer to move, but that she did not wish to incur any costs or fines if she

did so. The Tenant testified that she did not give her written notice to move and was prepared to stay in the rental unit for the remainder of the term of the tenancy if no other tenant could be found to take over the lease.

The Tenant testified that the Landlord found another tenant for February 1, 2009. The Tenant testified that she was surprised to see a charge for liquidated damages in the amount of \$700.00 on the move-out inspection report, and disputed the amount. The Tenant testified that the Landlord's agent replied that it was a mistake and crossed out the amount for liquidated damages and initialed the change. The Tenant provided a copy of the move-out inspection report.

The Tenant stated that the Landlord was diligent in attempting to find another tenant for the rental suite, but that she had made it clear to the Landlord that she would not move if she was going to be charged damages as a result.

Analysis

The Tenant complained to the Landlord about her loss of quiet enjoyment of the rental unit. The Landlord found a new tenant for the rental unit before the Tenant moved out of the rental unit. The Landlord's agent crossed out the reference to liquidated damages on the move-out inspection report. Based on the evidence and testimony of both parties, I find that the Landlord and the Tenant entered into a mutual agreement to end the tenancy, and therefore the Landlord is not entitled to liquidated damages or loss of rent from the Tenant.

The Tenant is entitled to return of the security deposits paid to the Landlord, together with accrued interest in the amount of \$6.60, forthwith.

The Landlord has not been successful in its application and is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

The Landlord's application is dismissed without leave to re-apply.

I grant the Tenant a monetary order in the amount of \$1,406.60. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that court.

May 8, 2009
