

DECISION AND REASONS

Dispute Codes: MNR, MNSD, MNDC

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary order for unpaid rent;
2. A monetary order for damage and/or compensation;
3. An order to be allowed to retain the security deposit; and
4. A monetary order to recover the filing fee paid for this application.

Total sum sought by the Landlord: \$2,050.00.

The tenant did not appear. Based on the evidence of the landlord I am satisfied that the tenant was properly served with the Application for Dispute Resolution by way of registered mail.

Summary of Background

The landlord testified that this tenancy began in or about December 1, 2008 at which time the parties entered into a one year term ending November 30, 2009. Rent was fixed at \$830.00 per month and the tenant paid a security deposit of \$415.00 on December 3, 2009 and a pet deposit of \$200.00 on December 4, 2008. The landlord says that on April 29, 2009 the tenant gave notice that he intended to vacate the rental unit on May 31, 2009 and he did vacate on May 30, 2009. The landlord testified that she was unable to re-rent the premises until July 1, 2009 despite having placed numerous advertisements in the local newspapers. The landlord therefore claims \$830.00 loss of rent for June 2009, plus a late payment fee of \$20.00 as agreed to in the Tenancy Agreement submitted in evidence. The landlord also claims \$900.00 for carpet replacement, \$50.00 for general cleaning and \$300.00 for "liquidated damages per contract".

The tenant agrees that he signed a residential tenancy agreement setting a fixed term ending September 30, 2009. The tenant testified that he was of the belief that he could end the fixed term tenancy by providing proper notice to do so and by paying a \$300.00 liquidated damages fee. The tenant pointed out Clause 3(a)(i) of the tenancy agreement which says:

- i) To terminate this lease prior to the expiry date on the 30 day of September 2009 the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition **the tenant is required to pay \$300.00 as liquidated damages to cover administration costs – this is not a penalty.**

(reproduced as written)

The tenant says he when he realized he could not readily afford the rent he spoke to the manager who confirmed his understanding of the clause. He then decided to "cut his losses" by giving one month's notice to vacate as of May 31, 2009 and pay the \$300.00 charge. The tenant testified that he does not understand why the landlord is now

seeking rent for June and a late payment fee for June's rent when the tenancy clearly ended on May 31, 2009.

The tenant agrees that he signed the agreement to the carpet cleaning charge of \$60.00.

Findings

With respect to the landlord's claim for rent for June rent I note paragraph 3(a)(i) of the Tenancy Agreement which says:

- i) To terminate this lease prior to the expiry date on the 30 day of November 2009 the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition **the tenant is required to pay \$300.00 as liquidated damages to cover administration costs – this is not a penalty.**

(reproduced as written)

I find that the paragraph, set out above, as contained in the tenancy agreement entered into by to by the parties is clear. It says that if the tenant wishes to end the lease prior to the end of its fixed the tenant must pay \$300.00 in liquidated damages. It does not say the landlord is entitled to the \$300.00 liquidated damages plus loss of rental income. The evidence of the landlord is that the tenant gave notice at the end of April 2009 that he would vacate at the end of May 2009 and he did so. While the landlord has submitted a condition inspection report upon which she has noted various charges to be applied I am not satisfied that the tenant signed this document at the end of this tenancy agreeing to those charges. I find that the only sum the tenant is obliged to pay is the \$300.00 in "liquidated damages" as set out above. I therefore dismiss the landlord's claim for recovery of rent for June 2009 in the sum of \$830.00 and allow the landlord's claim for the \$300.00 "liquidated damages".

With respect to the landlord's claim for \$20.00 as a late payment fee for June's rent, this tenancy ended May 30, 2009 and I find that the landlord is not entitled to a late payment fee for rent that was not due.

The landlord has also claimed \$900.00 for carpet replacement and \$50.00 for cleaning however, I find that the landlord has failed to prove that the tenant cause damages such that the carpets to be replaced. I also find that the landlord has failed to prove that the tenant did not properly clean the rental unit at the end of the tenancy. I therefore dismiss these claims.

As the landlord has been unsuccessful in this application except to be awarded a sum the tenant had already agreed to pay, I will not allow the landlord to recover the filing fee paid for this application.

Conclusion

The security and pet deposits along with accrued interest to the date of this decision now amount to \$615.78. I direct the landlord to deduct \$300.00 from that sum and return the sum of \$315.78 to the tenant forthwith.

In the event that the landlord does not comply with this direction, the tenant has been provided with a formal Order enforceable in the Provincial Court of British Columbia.