

## **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: \$1,380.00

All parties appeared and gave evidence under oath.

### **Summary of Background**

The landlord testified that this tenancy began in or about October 1, 2008 at which time the parties entered into a one year term ending September 30, 2009. Rent was fixed at \$1,250.00 per month and the tenant paid a security deposit of \$625.00 on or about September 1, 2009. The landlord says that on April 30, 2009 the tenant gave notice that he intended to vacate the rental unit on May 31, 2009. The landlord testified that, to date, they have been unable to re-rent the rental unit despite having placed numerous advertisements in the local newspapers, Craigslist and placing advertisements in the front of the rental building. The landlord testified that although the rental unit remains vacant they are only seeking rent for June in the sum of \$1,250.00 and a late payment fee for June's rent as agreed to in the tenancy agreement. The landlord testified that they are not seeking the \$300.00 liquidated damage fee as set out in the tenancy agreement.

The landlord testified that they were also required to clean the carpets and are seeking that cost in the sum of \$60.00 which sum was agreed to in writing by the tenant.

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 0209 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 I agree with the tenant. I find that the paragraph, set out above, as contained in the tenancy agreement entered into by the parties to be clear. It says that if a tenant wishes to end the lease prior to the end of its fixed term the tenant must pay \$300.00 in liquidated damages. It does not say the landlord has the option of choosing whether to charge for future rent or seek the \$300.00. Quite simply, it says the tenant will pay \$300.00. I find that the tenant gave proper notice as required and therefore the only sum he would be obliged to pay is \$300.00. I therefore dismiss the landlord's claim for recovery of rent for June 2009 in the sum of \$1,250.00. As the landlord has not applied for the \$300.00 fee, I will not award that sum either.

With respect to the landlord's claim for \$20.00 as a late payment fee for June, this tenancy ended May 31, 2009, the landlord is not entitled to a late payment fee for rent that was not due.

As the tenant agreed to pay the \$60.00 carpet cleaning fee, I will allow the landlord to deduct that sum from the security deposit. 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 deposit and accrued interest to the date of this decision amounts to \$628.12 I direct the landlord to deduct \$60.00 from that sum and return the sum of \$568.12 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.