

DECISION

Dispute Codes: MNR, MNDC and FF

Introduction

This application was brought by landlord seeking a Monetary Order for unpaid rent and loss of rent, dumping fees and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the amounts claimed.

Background and Evidence

The mail tenant had lived in the rental unit for several months with another male who had moved out in July 2009.

On July 12, 2009, the male tenant and the female tenant signed a fixed term rental agreement with the landlord to begin August 1, 2009 and to continue to January 31, 2010.

Rent was to be \$500 per month with a \$250 security deposit which was never paid and the parties had an unwritten agreement that the tenants would complete some needed repairs to the bathroom.

During the hearing, the landlords gave evidence that when the August rent and security deposit had not been paid, they served the tenants with a 10-day Notice to End Tenancy on August 5, 2009. Having been unable to contact the tenants, they left a 24-hour notice on August 9th and entered the rental unit on August 10th to find that the tenants had not moved in.

The tenants made claim that the rental unit was not habitable primarily because of very heavy mold and damage to the bathroom. The landlords noted that the damage had occurred while the male tenant was cohabiting with the former tenant and that the female tenant had been a guest several times in the rental unit. Therefore, the condition of the bathroom had not been a surprise to them and, moreover, the tenant had agreed to do the repairs.

The landlords make claim for the rent/loss of rent for August and September, recovery of the filing fee for this proceeding, and dumping fees.

Analysis

The tenants signed a fixed term rental agreement on July 12, 2009 to begin on August 1, 2009 and never did advise the landlords that they had decided not to move in. The agreement contains a provision that the tenants pay the last month's rent at the beginning of the tenancy, a term that is unenforceable under the Ac. however, it does not nullify the core agreement.

Therefore, I find that the landlords are entitled to recover the August rent.

Section 7 of the *Act*, which makes provision for one party to a rental agreement to make claim for damage or loss caused by the other, and it also imposes a duty on the claimant to do whatever is reasonable to minimize their loss. With respect to the September rent, the landlords gave evidence that they delayed the search for new tenants as they were preoccupied with preparations for a family wedding.

While that is a reasonable priority, the tenants cannot be held responsible for the delay. At the same time, the condition of the rental unit as demonstrated by photographs submitted by the tenants indicates that substantial work would have been required before the unit was suitable for showing.

Therefore, I find that the loss of September rent should be split equally between the landlords and tenants.

As to the dumping fees, I find, because the present tenants did not begin the tenancy, the dumping fees should be attributed to the previous tenancy. Therefore, I cannot award that cost.

Having found merit in the landlords' application, I find that they are entitled to recover the filing fee for this proceeding.

Thus, I find that the landlords are entitled to a Monetary Order calculated as follows:

Rent for August 2009	\$500.00
Rent for one-half of September 2009	250.00
Filing fee	50.00
TOTAL	\$800.00

Conclusion

The landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$800.00 for service on the tenants.