

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for loss of rent and losses arising from the tenants leaving a fixed term rental agreement prior to its expiry. The landlord also seeks authorization to retain the security deposit in set off against the balance owed and recovery of the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for loss of rent, liquidated damages and advertising costs, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on October 1, 2008 under fixed term rental agreement set to end on September 30, 2009. Rent was \$1,650 per month and the landlord held a security deposit of \$825 paid on September 18, 2009.

On July 25, 2009, the parties signed a new agreement to expire September 30, 2010 and increasing rent to \$1,700 per month.

During the hearing, the parties gave evidence that the tenants suffered a reduction in income due to an injury, and submitted a notice on August 31, 2009 to end the tenancy on September 30, 2009.

The landlord gave evidence that advertising of the rental unit began in early September but they were unable to find a new tenant to move in until November 1, 2009 at a reduced rent of \$1,550 per month.

Therefore, the landlord claims and I find as follows:

Loss of rent for October 2009 - \$1,650. Section 7(1) of the *Act* states that, if either party to a rental agreement suffers a loss due to a breach of the agreement by the other, the non complying party must compensate the other for the loss. In this instance, I find that the tenants breached the fixed term agreement signed on July 15, 2009 resulting in the landlord's loss of the October rent. By beginning to advertise early in September, I find the landlord has met the obligation imposed by section 7(2) to take reasonable steps to minimize the loss. Therefore the claim is allowed in full.

Liquidated damages and advertising costs - \$760.52. Clause 26 of the Rental Agreement includes a provisions that, "The tenant agrees to pay a Lease Breaking Fee of \$500.00 and the advertising costs to procure a new Tenant, in the event that notice is given to terminate this Agreement prior to its expiry date. I have reviewed this clause vis a vis the Residential Policy Guideline #4, and find that the charge represents a genuine pre-estimate of the costs of finding new tenants as required. The claim is allowed.

Filing fee - \$50. As the landlord's application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Retention of Security Deposit – (\$825 plus interest). As the tenancy ended on September 30, 2009 and the landlord made application on October 8, 2009, I find that the landlord has made application within the 15 days required under section 38(1) of the *Act* and is entitled to retain the security deposit in set off against the balance owed.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Loss of rent for October 2009	\$1,650.00
Lease breaking fee (liquidated damages)	500.00
Advertising costs	260.52
Filing fee	50.00
Sub total	\$2,460.52
Less retained security deposit	- 825.00
Less interest (September 18, 2008 to date)	- 3.25
TOTAL	\$1,632.27

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,632.27, for service on the tenants.

February 5, 2010