

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for loss of rent and utilities fee for a period during which the rental unit remained unrented after the tenants left the fixed term rental agreement early. The landlord also sought to recover the filing fee for this proceeding from the tenants.

Despite having been served with the Notice of Hearing sent by registered mail on October 14, 2009, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for loss of rent and unpaid utilities and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on September 1, 2008 under a fixed term rental agreement set to end on August 31, 2009. Rent was \$1,950 per month plus \$200 utilities and the landlord held a security deposit of \$975 paid on June 25, 2008.

During the hearing, the landlord gave evidence that disposition of the security deposit been settled between the parties.

The landlord stated that the present claim arose when the tenants gave notice on April 3, 2009 that they would be vacating the rental unit on April 30, 2009. By letter of April 6, 2009, the landlord reminded the tenants of their potential exposure for loss of rent in breaking a fixed term agreement, pledged to begin advertising immediately, and sought and offered cooperation in minimizing the potential loss.

The landlord gave evidence that the property management company began immediately advertising on their own web site, Craigslist, Kijiji, and Used Victoria.

However, the landlord was not able to find new tenants until June 15, 2009 and now seeks to recover the loss of rent and utilities fee for the one and one half months during which the rental unit remained empty.

Analysis

Section 45 of the *Act* which sets out the requirements for a tenant's notice to end tenancy states that tenants must give at least one full month notice following the next rent due date after notice is served. In the case of a fixed term tenancy, valid notice cannot be earlier than the end of tenancy date stated in the fixed term agreement. In this instance, I find that notice was given on April 3, 2009 for April 30, 2009. Even in a month to month tenancy, the earliest effective date would have been May 31, 2009.

However, as this was a fixed term tenancy, the earliest effective date would have been August 31, 2009 as per the rental agreement.

Section 7 of the *Act* states that where one party to a rental agreement suffers a loss due to a breach by the other, the non-complaint party must compensate the party suffering the loss.

Therefore, I find that the tenants must pay the landlord for the loss of rent and utility fee for all of May and half of June 2009. I further find that the landlord is entitled to recover the filing fee for this proceeding from the landlord.

The amount owed is calculated as follows:

Loss of rent & utilities fee for May 2009	\$2,150.00
Loss of rent & utilities fee for ½ of June 2009	1,075.00
Filing fee	<u>50.00</u>
TOTAL	\$3,275.00

Conclusion

The landlord's copy of this decision is accompanied by a Monetary for \$3,275.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

February 3, 2010