

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for loss of rent for a period during which the rental unit remained unrented after the tenant left the fixed term rental agreement early. The landlord also sought to recover the filing fee for this proceeding from the tenant and authorization to retain the security deposit in set off against the balance claimed.

Despite having been served with the Notice of Hearing sent by registered mail on September 18, 2009, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issues to be Decided

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

Background and Evidence

This tenancy began on July 1, 2009 under a fixed term rental agreement set to end on December 31, 2009. Rent was \$400 per month and the landlord holds a security deposit of \$400 paid on July 1, 2009.

During the hearing, the landlord submitted a copy of the tenant's notice to end the tenancy dated August 31, 2009, the day the tenant moved out of the rental unit.

The landlord stated that \$685 of the rent for September had been paid, leaving a shortfall of \$115 for the month.

She stated that she had been able to get a new tenant for November 1, 2009 and therefore claims \$800 for loss of rent for October.

The landlord began advertising immediately on receiving the tenant's notice and submits paid invoices for advertising for \$63.23 for September and \$79.09 for October.

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.

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-compliant party must compensate the party suffering the loss but must do whatever is reasonable to minimize the loss.

In, this instance, I find that by breaching the fixed term rental agreement, the tenant is responsible for the landlord's loss of rent for September and October. Given that the breach occurred so early in the tenancy, I find that the landlord should also be entitled to recover the advertising costs, resulting from her attempts to reduce the loss caused by the tenant's early departure.

Therefore, I find that the tenants must pay the landlord for the loss of rent, advertising costs, and filing fee for this proceeding, and that the landlord should be authorized to retain the security deposit in set off, calculated as follows:

Loss of rent for September 2009	\$ 115.00
Loss of rent for October 2009	800.00
Advertising for September	63.23
Advertising for October	79.09
Filing fee	50.00
Sub total	\$1,107.32
Less retained security deposit (No interest due)	- 400.00
TOTAL	\$ 707.32

Conclusion

The landlord's copy of this decision is accompanied by a Monetary for \$707.32, enforceable through the Provincial Court of British Columbia, for service on the tenant.

February 25, 2010