

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on May 16, 2009 and was set to run for a fixed term of one year, ending on June 30, 2010. Rent was set at \$850.00 per month and a \$425.00 security deposit was paid. I address the landlord's claims and my findings around each as follows.

[1] **Loss of income.** The landlord seeks to recover \$850.00 in lost income for the month of November and \$50.00 for each of the months of December – June inclusive. The parties agreed that the tenant did not advise the landlord that they were vacating the rental unit until the end of October, approximately 2 days before they moved out. The landlord testified that he immediately began advertising the rental unit but was unable to secure new tenants until December 1. The landlord originally advertised the unit at \$850.00 per month, but when he was unable to find prospective tenants, he reduced the rent to \$800.00 per month and was able to re-rent at that rate. The landlord seeks to recover the difference in rent between what the tenant was paying and what he is receiving from the new tenants. I find that the tenant was not entitled to end the tenancy prior to the expiry of the fixed term. I find that the landlord acted reasonably to mitigate his losses and I award the

landlord \$850.00 in lost income for the month of November. I find that the tenant must also be held liable for the \$50.00 per month loss in rental income that the landlord will suffer through the balance of the fixed term and I award the landlord a further \$350.00 for a total award of \$1,200.00 for lost income.

- [2] **Advertising costs.** The landlord seeks to recover \$314.79 in advertising costs for the rental unit. The landlord testified that he had to place several advertisements in the newspaper in order to locate new tenants. The landlord entered into evidence an invoice showing that on November 4 he was charged \$28.17 for an advertisement and that on November 30 he was charged \$181.35 for one advertisement and \$57.30 for a second advertisement. The landlord testified that the November 30 charges show that he listed the unit in the section advertising duplexes as well as the section advertising apartments. The landlord was unable to explain why the cost of the advertisement for the duplex listing had increased from \$28.17 on November 4 to \$181.35 on November 30 or why the cost of advertising the unit in the apartment section was \$57.30 as opposed to the original \$28.17 for advertising in the duplex section. The invoice also shows a balance forward of \$34.62. The landlord testified that he believed the balance forward was applicable to a separate rental unit he had previously advertised. The landlord testified that the tenancy agreement with the new tenants was signed on December 1. I am satisfied that the landlord is entitled to recover the cost of advertising the unit as the need for incurring that cost arose from the tenant having vacated the unit prior to the expiry of the fixed term. However, I am not satisfied with the explanation provided by the landlord as to the extreme difference in pricing for the three advertisements. While there may be a reasonable explanation for that difference, it was not given at the hearing and accordingly I find that the amount claimed cannot be justified. I find that the balance forward is not the responsibility of the tenant. I find that the landlord was able to place an advertisement for \$28.17 on November 4 and see no reason why the same price would not have been charged for the advertisements on November 30. This suggests that something more than a simple advertisement was placed on November 30 and in the absence of evidence that the tenant should be held liable for the cost of something more

than a simple advertisement, I find that the landlord is limited to claiming the established charge of \$28.17. I find that the landlord was justified in placing the advertisement in both the duplex and the apartment sections of the newspaper and find that the landlord is entitled to recover the cost of three advertisements, which I set at \$28.17 each. I award the landlord \$84.51.

[3] **Loss of business contracts.** The landlord testified that he had an offer to enter into a contract for services with a party in Burnaby, but could not take the contract because he had to travel to Kamloops to deal with the rental unit and estimated that he lost \$3,000.00 in gross revenue as a result. The landlord further testified that he was unable to continue with another contract because of the time he spent dealing with the rental unit. The landlord chose to enter into a business in a location that was some 350 kilometres from his home. The tenant cannot be held responsible for the landlord's choice to operate businesses that were so far apart. The claim is dismissed.

[4] **Anxiety, pain and suffering.** The landlord claims compensation for anxiety, pain and suffering. The landlord submitted that he suffers from severe anxiety which was aggravated by a car accident which occurred prior to the tenant's breach of the contract and claims that the events which took place at the end of this tenancy have further aggravated his condition. Despite having been diagnosed with an anxiety disorder, the landlord has chosen to engage in business as a landlord. The tenant cannot be held responsible for any impact that the business has on the landlord's disorder and in any event, breach of contract cases do not give rise to claims in pain and suffering. The claim is dismissed.

[5] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

Loss of income	\$1,200.00
Advertising	\$ 84.51
Filing fee	\$ 50.00
Total:	\$1,334.51

I order that the landlord retain the \$425.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$909.51. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I note that the landlord had included comments in his original application and in his documentary evidence that the rental unit required cleaning, estimates of the cost of trips to Kamloops and comments that he had to pay utilities over the winter. I have not addressed these claims as they were not quantified and were not included in the detailed list of his claim which at the hearing the landlord confirmed contained an accurate breakdown of his claim.

Dated: March 12, 2010

Dispute Resolution Officer