

Decision

Dispute Codes:

MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for compensation for loss of rent; and to recover the cost of the filing fee from the Tenant.

The Interpreter affirmed to interpret the Cantonese and Mandarin languages to the English language, and the English language to the Cantonese and Mandarin languages to the best of her skill and ability. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for compensation for loss of rent, and if so, in what amount?

Background and Evidence

This tenancy started on April 15, 2008, and ended on August 31, 2009. Monthly rent was \$2,500.00, due on the fifteenth day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 on March 25, 2008. On March 25, 2008, the Landlord and Tenant entered into a term lease, expiring April 15, 2010. A copy of the tenancy agreement was entered in evidence.

The Landlord gave the following testimony:

On July 15, 2009, the Tenant called the Landlord and said she wanted to terminate the lease early, effective August 31, 2009. The Landlord testified that she did not agree to end the tenancy early.

On July 28, the Landlord started advertising the rental unit in the local newspaper and on Craigs List. The Landlord provided receipts for the cost of advertising in the local newspaper.

The Landlord was able to re-rent the rental unit effective November 15, 2009, at a reduced rent of \$2,000.00 per month. The Landlord provided a copy of the new tenancy agreement in evidence.

The Landlord is seeking compensation, as follows:

Description	Amount claimed
Loss of rent from September 1 to November 14, 2009 (2 ½ months)	\$6,250.00
Difference in rent from November 15, 2009 to April 15, 2009 (\$500.00 x 5 months)	\$2,500.00
Cost of advertising rental unit (receipts provided)	\$109.20
TOTAL CLAIM FOR DAMAGES	\$8,859.20

The Tenant gave the following testimony:

The Tenant agreed that she had signed the 2 year term lease, but stated that the Landlord had told her she could end the lease after one year, without penalty, as long as the Tenant gave her 4 weeks notice. The Tenant testified that she had explained to the Landlord that her children would probably be leaving home soon and she would not require as much space. The Tenant testified that she trusted that Landlord and signed the agreement.

The Tenant testified that she also advertised the rental unit, in a different local newspaper. The Tenant provided copies of receipts in evidence. The Tenant stated that her husband came from China to be available for showing the rental unit. The Tenant testified that there was interest in the rental unit, but prospective tenants thought

the rent was too high. The Tenant testified that she asked the Landlord if she was willing to reduce the rent, and the Landlord said no.

The Tenant testified that when she gave her notice, the Landlord did not tell her that she would be responsible for rent until a new tenant was found or for the difference in the rent for the remainder of the term.

The Tenant's Witness gave the following testimony:

The Tenant's Witness is the Tenant's husband. On September 2, 2009, the Witness met with the Landlord to return the keys. The Witness testified that the Landlord asked him to sign a document to finalize the termination of the lease. The document was in English and the Witness does not read English. The Witness testified that the Landlord wanted him to sign a document agreeing that the Landlord could keep \$1000.00 of the security deposit for damages to the rental unit. The Witness testified that he told the Landlord he would sign the document if the Landlord agreed not to sue for further compensation. The Witness testified that he signed the document and thought the matter was concluded. A copy of the document was entered in evidence.

The Landlord gave the following reply:

The Landlord testified that in October, 2009, she lowered the amount of rent she was asking for the rental unit, because the market was changing.

The Landlord testified that the Witness did not mention that he didn't understand what he was signing on September 2, 2009. The Landlord stated that the Witness is a business man and knows not to sign something he doesn't understand. The Landlord stated that if the Witness did not understand the document he could have asked for independent advice before signing the document.

Analysis

The document signed on September 2, 2008, by the Witness, relates only to the final settlement of the security deposit. There is no application before me with respect to the security deposit.

The Tenant signed a term lease at the beginning of the tenancy. The Landlord disputed that there was an oral agreement that the tenant could end the tenancy before the term if she gave 4 week's notice, without penalty. There was no subsequent written tenancy agreement entered into between the parties. I find that the tenancy agreement signed on March 25, 2008, is a legally binding contract between the parties.

I am satisfied that the Landlord attempted to mitigate her loss by advertising the rental unit as soon as she was verbally advised the Tenant was ending the tenancy.

The Landlord seeks compensation for loss of rent and is entitled to be compensated in the amount sufficient to put the Landlord in the same position as if the Tenant had not breached the lease agreement, including compensation for loss of rent up to the earliest time the Tenant could have legally ended the tenancy.

The Tenant paid rent on the 15th day of each month. Therefore, I allow the Landlord loss of rent for the period of September 15, 2009 to November 14, 2009 in the amount of \$5,000.00.

The tenancy agreement is vague with respect to the term. It states: This tenancy starts on: **15 April 2008**. This tenancy is for a fixed length of time: **two year** ending on **15 April 2010**. A two year term would end the tenancy on 15 March 2010. A term from April 15, 2008 to April 15 2010 is 25 months. The parties both referred to the tenancy as a 2 year tenancy, and therefore, I find that the intent was that the tenancy be a 2 year term lease when the tenancy agreement was signed. Therefore, I find that the Landlord is entitled to loss of rent from November 15, 2009 to March 15, 2010, in the amount of \$2,000.00 (\$500.00 x 4 months).

I find the advertising costs of \$109.20 claimed by the Landlord to be reasonable, and allow this portion of the Landlord's claim.

The Landlord has been successful in her application and is entitled to recover the cost of the filing fee from the Tenant.

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of \$7,209.20 against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: April 4, 2010