

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on August 1, 2009 and ended on January 31, 2010 when the Tenant moved out. Rent was \$850.00 per month. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlord said that the Tenant gave her written notice on January 9, 2010 that she was ending the tenancy on January 31, 2010. The Landlord said she advertised the rental unit for rent on Craigslist on January 11, 2010 and was able to re-rent it for February 15, 2010 at \$900.00 per month. The Landlord said she increased the rent because her strata fees increased by approximately \$10.00.

The Tenant claimed that the Landlord showed rental unit for the first time on January 13, 2010 and rented it to that person. The Tenant said the Landlord advised her by e-mail on January 17, 2010 that she had reviewed that tenant's references and signed a tenancy agreement. Consequently, the Tenant argued that the Landlord rented the rental unit to the first person who came along and did not use her best efforts to try to rent the rental unit for the 1st of February.

Analysis

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give one clear months notice. Therefore, the earliest the Tenant's notice dated January 9, 2010 could have taken effect would have been February 28, 2010. However, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The Landlord claimed that she received many calls about the rental unit but that none of those potential tenants were willing to take the unit before March 1, 2010. However, I find that after only 6 days of advertising the rental unit, the Landlord accepted an offer to rent for February 15, 2010 and decided not to consider any other potential tenants. In the circumstances, I find that the Landlord did not take reasonable steps to minimize her loss of rental income and must bear some of the responsibility for it. Consequently, I find that the Landlord is entitled to recover only one week of lost rental income for February 2010 in the amount of \$212.50.

As the Landlord has only been partially successful in this matter, I find that she is entitled to recover one-half of the filing fee for this proceeding or \$25.00. I order the Landlord pursuant to s. 38(4) of the Act to keep \$237.50 from the Tenant's security deposit in full satisfaction of her claim. I further order the Landlord to return the balance of the Tenant's security deposit in the amount of \$187.50 to her.

Conclusion

A monetary order in the amount of **\$187.50** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 17, 2010.

Dispute Resolution Officer