

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for loss of rent, liquidated damages, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance found owing consequent to the tenant leaving the fixed term rental agreement early..

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the claims submitted.

Background and Evidence

This tenancy began on August 1, 2009 under a 12-month fixed term rental agreement set to end on July 31, 2010. Rent was \$1,200 per month and the landlord holds a security deposit of \$600, paid on August 10, 2009.

During the hearing, the landlord gave evidence uncontested evidence that the tenant had, on November 10, 2009, given notice of his intention to conclude the tenancy on November 30, 2009.

Despite advertising in a variety of mediums including newspaper and internet, the landlord was unable to find a new tenant to take the suite before January 1, 2010. The tenant signed the move-out Condition Inspection report which included the landlord's intention to claim on the security deposit.

Therefore, the landlord claims \$600 in liquidated damages as per the rental agreement, \$1,200 in loss of rent for December 2009, recovery of the \$50 filing fee and authorization to retain the tenant's security deposit in set off against the balance.

The tenant gave evidence that he was compelled to leave the tenancy early due to mice in the apartment. He said that the landlord had made some effort to trap the mice but they had returned or some had remained.

Analysis

Section 45 of the *Act* which deals with tenant's notice to end a tenancy states that a tenant may give notice to end a fixed-term rental agreement for a date that is no sooner than the end of tenancy date set by the rental agreement, in this case July 31, 2010.

Section 45(3) will permit a tenant to end the tenancy sooner if the landlord has failed to remedy a breach of a material term of the rental agreement within a reasonable time of having received written notice. In this matter, the tenant had not provided written notice of the mice and his intention to consider their presence cause to end the tenancy if the problem was not remedied.

Therefore, I must find that the tenant is responsible for the loss of rent for December 2009. I further find that the tenant must honour the liquidated damages provision of the rental agreement under which he agreed to pay the landlord \$600 if he ended the tenancy early.

Accordingly, I find that the landlord is entitled to a Monetary Order, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

| | |
|--|-------------------|
| Loss of rent for December 2009 | \$1,200.00 |
| Liquidated damages | 600.00 |
| Filing fee | 50.00 |
| Sub total | \$1,850.00 |
| Less retained security deposit (No interest due) | - 600.00 |
| TOTAL | \$1,250.00 |

Conclusion

In addition to authorization to retain the tenant's security deposit with interest, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$1,250.00** for service on the tenant.

May 5, 2010