

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking return of his security deposit and costs of storage and moving of his furniture as a result of the landlords failing to provide the rental unit as stated on the fixed term rental agreement. The tenant also sought to recover the filing fee for this proceeding from the landlords.

Despite having been served with the Notice of Hearing sent by registered mail on February 22, 2010, the landlords did not call in to the number provided to enable their 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 tenant is entitled to a Monetary Order for return of his security deposit, storage and moving costs and the filing fee.

Background and Evidence

The tenant, who was moving from Vancouver to Kamloops, entered into a three-year fixed term rental agreement with the landlords, signed by the tenant on November 26, 2009 and signed by the landlords on November 27, 2009. Rent was to be \$1,500 per month and the tenant subsequently paid a security deposit of \$750.

The agreement stated that the tenancy was to begin on January 1, 2010 and end on May 5, 2013.

At some time in December, the landlords advised the tenant that the rental unit would not be ready for January 1, 2010 and asked the tenant to postpone possession until February 1, 2010. The tenant stated that each of the two landlords gave him differing explanations as to the cause of the delay.

Having found himself in an untenable position, the tenant tentatively agreed to the postponement. However, he was able to find another rental unit, and advised the landlords in mid January that he would not proceed and requested his deposit back. Subsequently, he stated that the landlords would not return his calls.

The tenant stated that, due to the change in plans, he had to put his belongings into storage and incurred storage and moving costs of \$198 and \$300 respectively and provided receipts in support of these claims.

The tenant submitted a copy of a letter to the landlords requesting return of the deposit and storage and moving costs.

Analysis

I find as fact that by signing the rental agreement on November 26th and 27th, 2009 and by payment of the tenant's security deposit, the parties created a binding fixed term rental agreement. While there may have been some discussion between the parties about adjusting the occupancy date, no other written agreement was created. Therefore, I find that the original agreement prevails.

I further find that the landlords breached a fundamental term of that agreement by failing to provide occupancy on January 1, 2010.

Section 38(1) of the *Act* provides that a landlord must, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address either return the security deposit or make application for dispute resolution to make a claim against it.

Section 38(6) of the *Act* states that if the landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit.

In this case, I find that the landlords did not return the security deposit as required and did not make application to make claim upon it within 15-days of the end of the tenancy which I find to be January 1, 2010.

Accordingly, I find that the landlords must now return the security deposit in double in accordance with section 38(6) of the *Act*.

Section 7 of the *Act* provides that that if either party to a rental agreement suffers a loss due to the other's breach of the legislation or rental agreement, then the non-complying party must compensate the other for the loss.

I find that the tenant's furniture storage and transfer costs were a direct result of the landlords' breach of the occupancy date of the rental agreement and that the landlords must compensate the tenant for those costs.

I further find that the tenant is entitled to recover the filing fee for this proceeding from the landlords.

In total, I find that the landlords owe the tenant an amount calculated as follows:

To return the security deposit (No interest due)	\$750.00
To double the security deposit	750.00
Storage costs	198.00
Moving costs	300.00
Filing fee	50.00
TOTAL	\$2,048.00

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for \$2,048.00, enforceable through the Provincial Court of British Columbia, for service on the landlords.

May 4, 2010