

DECISION

Dispute Codes MNSD, 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.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed on the following facts. The tenancy began on November 13, 2008 at which time a \$575.00 security deposit was paid. Rent was set at \$1,150.00 per month and the tenancy continued for a term of one year at the end of which the parties extended the term to end on April 30, 2010. The rent was reduced at that time to \$1,125.00 per month. On or about December 4, 2009 the tenants gave the landlord a notice that they would be ending the tenancy on January 31, 2010.

The landlord testified that he immediately began advertising the rental unit, posting ads on Craigslist and at the Abbotsford hospital but he was unable to re-rent the unit until February 15. The landlord was unable to find tenants to rent the unit at \$1,125.00 per month and the new tenants agreed to pay just \$1,100.00 per month. The landlord seeks loss of income for the first half of February and recovery of his loss of \$25.00 per month for each of the months of March and April.

The tenants argued that the landlord failed to act reasonably to mitigate his losses and stated that they did not see advertisements placed by him until January 20. The tenants claimed that the landlord priced the unit unreasonably and that this prevented him from re-renting the unit sooner. As a result of their advertising the tenants had found a

prospective tenant whose name they passed onto the landlord. The tenants suggested that the unit could have been re-rented sooner had the landlord accepted this person as a tenant. The landlord replied that he telephoned the prospective tenant but did not receive any further communication from him. The tenants suggested that if the landlord had advised them that they would be held responsible for rent for any period in which the unit was vacant, they would have worked harder to re-rent the unit. As it was, the tenants showed the unit to several prospective renters.

Analysis

I find that the tenants voluntarily entered into a fixed term tenancy which was not set to expire until April 30, 2010. Absent a specific representation from the landlord that he did not intend to hold them to the fixed term, the tenants were obligated to fulfill the terms of their agreement. The landlord had a reasonable expectation that he would receive \$1,125.00 in rent each month until the end of April. I find that the landlord acted reasonably to minimize his losses and that while the tenants also acted in an effort to secure new tenants, they cannot escape liability under the terms of their agreement. I find that the landlord is entitled to recover \$575.00 in lost income for the first half of February and \$25.00 for each of the months of March and April and I award him \$625.00. The landlord is further entitled to recover the cost of the filing fee paid to bring this application and I award a further \$50.00. I am not convinced that if the landlord had communicated with the tenants prior to filing his application the tenants would have agreed to the entire amount of his claim.

Conclusion

The landlord is awarded \$675.00. I order the landlord to retain the \$575.00 security deposit together with the \$1.15 in interest which has accrued to the date of this judgment in partial satisfaction of his claim and I grant the landlord a monetary order under section 67 for the balance due of \$98.85. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 17, 2010
