



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, & FF

Introduction

This hearing dealt with the landlord's application seeking a monetary claim related to loss or damage suffered when the tenant breached the 5 year fixed term lease. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to compensation due to loss or damage suffered by the tenant's breach of the fixed term tenancy?

Background and Evidence

This has been a long term tenancy between the parties which originally began in March 1999. The current tenancy agreement between the parties commenced April 15, 2008 for a 5 year term at the monthly rent of \$1,600.00. The tenant paid an original security deposit of \$625.00 on March 8, 1999.

The landlord seeks the sum of \$436.51 for the following costs suffered when the tenant ended the fixed term lease:

Cost to advertize rental unit	\$136.51
Recovery of filing fee paid for this application	\$50.00
Total	\$436.51

The tenant disputes the landlord's claim and stated that the landlord accepted the termination of the tenancy. The tenant relied on the termination letter dated May 20, 2010 which he provided to the landlord. In this letter the tenant wrote, "As agreed upon

in our phone conversation, I hereby accept that the Lease signed between us be declared nul and void.” [Reproduced as Written]

The tenant argued that the landlord waived the right to claim any loss by the termination of the lease based on this agreement. The tenant stated that when he provided the letter to the landlord there was no indication from the landlord that costs would be sought and he believed that the end of the tenancy had been accepted without any loss from either party.

The landlord confirmed that she received the letter from the tenant and acknowledged that she did not respond to the letter. However, the landlord argued that this agreement did not limit her ability to claim for loss against the tenant due to the breach of the fixed term lease, it only confirmed that the parties agreed to terminate the lease.

Analysis

I grant the landlord’s application in part. I accept the landlord’s claim for the sum of \$250.00 to recover the cost of the moving fee charged by the strata corporation. This sum can be claimed against the tenant in accordance with regulation 7. The regulation does not require that the fee be described in the tenancy agreement. The landlord has provided a copy of a receipt issued from the strata corporation and the payment has been identified as payment for moving fees. I find that the tenant is responsible for this sum.

With respect to the end of the tenancy I find that the parties reached an oral agreement. The terms of the oral agreement are not clear however and the letter of May 20, 2010 from the tenant does not help to clarify what the parties agreed to. The wording of the agreement being null and void is very misleading and inaccurate as the tenancy relationship out of the contract did exist. I find that the intent of the wording used by the tenant in this letter is that the parties agreed to end the tenancy effective June 30, 2010.

I find that the parties did not discuss what the possible consequences of ending the tenancy agreement were and I find that the landlord had the obligation to inform the tenant of the possible costs resulting from the breach of the agreement including possible loss of rent and advertizing costs to find a new tenant. I find that it was unfair of the landlord to not disclose these potential costs to the tenant before the tenancy ended.

However, despite this oversight I find it is reasonable that the tenant share a portion of the cost to re-advertize the rental unit after breaching the fixed term tenancy because the alternative was that the tenant could have conducted his own advertizing to find

potential tenants to overtake the lease. It is reasonable and fair that the parties share this cost.

I find that the landlord has established a total monetary claim for the sum of **\$368.25**. This sum is comprised of the \$250.00 moving fee, on half of the cost of advertizing for \$68.25 and the \$50.00 filing fee paid by the landlord for this application. I Order that the landlord may recover this sum from the tenant's security deposit plus interest of \$692.72.

Although the landlord has requested to retain the tenant's security deposit, the landlord is only permitted to retain actual costs which have been established under the tenancy agreement or *Act* from the security deposit. The landlord has only established the sum of \$368.25 in loss due to the breach of the tenancy agreement and is required to return the balance of the security deposit to the tenant.

I have issued the tenant a monetary Order for the remaining balance of his security deposit for the sum of \$324.47.

Conclusion

The landlord's application is granted in part. I have determined that the landlord experienced a loss of \$368.25 after the tenant ended the fixed term tenancy early. This sum has been deducted from the tenant's security deposit and the remaining portion of the security deposit must be returned to the tenant.

I have issued a monetary Order to the tenant for the remaining sum of the security deposit. This Order may be filed with the Province of British Columbia Small Claims Court 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: December 07, 2010.

Dispute Resolution Officer