

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for return of rent paid for a two week period that followed her departure from the fixed term tenancy and recovery of the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for the return of the rent.

Background and Evidence

This tenancy began on October 1, 2009 under a 12-month fixed term rental agreement ending on September 30, 2010. Rent was \$1,100 per month and the landlord held a security deposit of \$550.

The tenancy agreement included a liquidated damages clause which provided that the tenant would pay the landlord \$400 if the tenant left let the tenancy early.

During the hearing, the tenant gave evidence that she had given notice on May 3, 2010 that she would be leaving the tenancy on May 31, 2010. She stated that, after

discussion with the landlord, she believed that the \$400 liquidated damages charge would conclude her obligations under the agreement and even that would be waived if she was able to find a new tenant for June 1, 2010.

As matters turned out, the landlord found a new tenant for June 15, 2010 and claimed the contested loss of rent for the first half of June 2010.

Analysis

Section 45 of the *Act* prescribes the requirements for a tenant's notice to end tenancy and states that notice to end a fixed term tenancy cannot have an end date that is earlier than the end date set by the agreement. In addition, notice must be given prior to the rent due date of the month in which the tenancy ends.

Section 7 of the *Act* states that if either party to a rental agreement suffers a loss due to the non-compliance of the other with the legislation or rental agreement the non-compliant party must compensate the other for the loss. This provision is qualified to the extent that it obliges the aggrieved party to do whatever is reasonable to mitigate the loss.

In this matter, the tenant holds that the landlord did not attempt to rent the unit during May 2010. The landlord stated that she had, in fact, shown the property on four occasions and had advertised in three different mediums.

That explanation, taken together with the fact that the landlord had a new tenant move in two weeks after the applicant gave up possession persuades me that the landlord met her obligation under section 7 of the *Act* to minimize her loss.

The liquidated damages paid by the tenant constitutes a previously agreed to amount to compensate the landlord's administrative costs arising from the tenant leaving early and is separate and apart from an award for loss of rent.

I find that the tenant was liable for the rent for the first two weeks of June, return of which was requested in her application.

Conclusion

The tenant's application is dismissed without leave to reapply.

November 19, 2010