

DECISION

Dispute Codes: **Landlord:** MNSD, MNDC and FF
Tenants: MNSD

Introduction

These applications were brought by both the landlord and the tenant.

By application of July 2, 2010, the landlords seek authorization to retain the tenant's security deposit in compensation for loss of rent on the grounds that she did not move in to the rental unit after signing a fixed term rental agreement. The landlord also sought to recover the filing fee for this proceeding.

By application of July 16, 2010, the tenant seeks return of the security deposit.

Despite having made application and having received the landlords' Notice of Hearing, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issues to be Decided

This matter requires a decision on which of the parties is entitled to the security deposit.

Background and Evidence

Documentary evidence submitted by the landlords includes a copy of a fixed term rental agreement signed by the parties on May 24, 2010.

Terms of the agreement included that it was to be for a fixed term to be on June 15, 2010 to December 30, 2010. Rent was set at \$985 per month and the tenant paid a security deposit of \$492.50 in cash.

During the hearing, the landlord gave evidence that during telephone conversations on June 12, 2010, the tenant first advised that she wished to postpone her move-in to June 20, 2010, then later advised that she did not wish to continue with the tenancy. The tenant attended at the landlords' suite the following day to demand return of her security deposit.

The landlord stated that he had been able to find a new tenant for August 2010 and seeks only to retain the security deposit in compensation for the loss of rent for the period from June 15, 2010 to June 30, 2010 plus recovery of his filing fee for this proceeding.

Analysis

With the signing of the rental agreement and payment of the security deposit on May 24, 2010, the parties created a contract that was binding on both parties. Section 45(2)(b) states that a tenant's notice to end a fixed term rental agreement cannot have an effective end of tenancy date that is earlier than the date set by the agreement, in this case, December 31, 2010. Therefore, I find that the tenant breached the rental agreement.

Section 7 of the Act states that if either party to a rental agreement breaches the agreement or the legislation the non-compliant party must compensate the other for any loss resulting from that breach.

In this matter, I find that the tenant's breach of the agreement resulted in the landlords' loss of two weeks rent and she must compensate them for that loss.

As the loss is equal to the security deposit, **I hereby authorize and order** that the landlords may retain the tenant's security deposit of \$492.50 paid on May 24, 2010 in compensation for the loss of rent for the latter half of June 2010.

I further find that the landlords are entitled to recover the filing fee for this proceeding from the tenant and issue a Monetary Order for \$50 for that purpose.

Conclusion

The landlords are authorized to retain the full security deposit of \$492.50 in set off.

The landlords' copy of this decision is accompanied by a Monetary Order for the \$50.00 filing fee, enforceable through the Provincial Court of British Columbia, for service on the tenant.

November 16, 2010