

DECISION

Dispute Codes: MNR, MNDC, MNSD and FF

Introduction

By application of August 17, 2010, the landlord seeks a Monetary Order for unpaid rent, loss or damage under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent, damage or loss, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

Background and Evidence

This tenancy began on October 1, 2009. Rent was \$1,500 per month and the landlord holds a security deposit of \$750 paid on September 15, 2009.

The date the tenancy ended is at the heart of this dispute after the landlord issued a Notice to End Tenancy for landlord use on May 26, 2010, setting an end of tenancy date of July 31, 2010. The notice was issued under section 49 of the *Act* as the landlord had an offer to purchase the property with a possession date of August 1, 2010.

As provided for in section 51 of the *Act*, the tenants rent for July 2010 was waived.

On July 16, 2010, the landlord learned that the tenants had come to an agreement with the new landlord that they could remain in the rental unit until September 30, 2010. Therefore, the landlord was of the view that he was entitled to recover the forgiven July rent. He submitted a copy of the statement of adjustments showing that the security deposit had not been forwarded to the purchaser.

The tenants wrote to the landlord on August requesting return of the security deposit and the landlord made application to claim upon it on August 17, 2010, within the 15 days permitted under section 38(1) of the *Act*.

Analysis

I find that the subject tenancy ended on July 31, 2010 pursuant to the Notice to End Tenancy for landlord use.

While the tenants and the new landlord were fortunate in finding that a new tenancy from August 1, 2010 to September 30, 2010 met the needs of both parties, that new tenancy was under a separate agreement and has no bearing on the agreement and notice between the tenants and the former landlord.

Therefore, I find that the tenants were fully entitled to the free month's rent granted under section 51 of the *Act* and the applicant landlord's request for its return is dismissed.

Consequently, the request to retain the security deposit in set off is dismissed and the landlord must return it to the tenants.

The landlord's request for the filing fee for this and an earlier abandoned application are denied.

The landlord's requests for mailing and copying expenses are dismissed as such expenses are not claimable as they are regarded as costs of doing business.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$750.00 for service on the landlord.

November 1, 2010