

## **DECISION**

**Dispute Codes:** MNR and FF

### **Introduction**

This application was brought by the landlord on July 20, 2010 seeking a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and recovery of the filing fee.

### **Background and Evidence**

This tenancy began on September 15, 2008 under a fixed term rental agreement ending on June 30, 2010 at which time the tenant vacated pursuant to a Notice to End Tenancy for unpaid rent served on June 5, 2010. Rent was \$1,100 per month and the landlord held a security deposit of \$550.

The landlord stated that he had not requested authorization to retain the security deposit in set off as the tenant had voluntarily surrendered it against damages on the move-out condition inspection report.

The tenant contested having done so and was advised that, as disposition of the security deposit is not an issue before me, she is at liberty to bring an application for its return under section 38(1) and (6) of the *Act*.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had accumulated a rent shortfall of \$4,755 as of February 2010. The tenant stated that she had made a number of payments in the interim, but the landlord stated that those had been applied to an accumulation of unpaid rent from 2009.

The tenant asked for time to submit proof of those payments, but given that the landlord did not contest them, and given that the tenant has had over four months to submit evidence, I did not feel a delay was warranted.

The tenant and her advocate gave evidence that the rent shortfall had resulted from the tenant losing her employment in 2009. They put forward the proposition that, as the landlord had acquiesced to partial rent payments since the tenant lost her employment, the rent set by the rental agreement was no longer enforceable as the tenant was now faced with a very large debt.

The landlord stated that a landlord should not be penalized for having granted a tenant additional time to catch up on the rent.

The tenant offered further evidence that she had suffered a loss of quiet enjoyment of the rental unit due to activities of other tenants in the rental building. The tenant was advised that she was and remains at liberty to make application on that cause, but as her application was not before me, I could not take such circumstances into account.

## **Analysis**

Section 26 of the Act provides that:

“A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

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, the non-compliant party must compensate the other for the loss. There is a duty on the party suffering the loss to do whatever is reasonable to minimize their loss.

In this matter, I find that the tenant had no right under the *Act* to withhold rent and I find that the materiality of the rental rate was not diminished by the landlord’s willingness to give the tenant an opportunity to get on her feet.

I further find that the landlord was correct in applying money paid in 2010 to the outstanding 2009 rent, in keeping with the common law principle that payments apply to the oldest debt first.

Therefore, I find that the landlord is entitled to a Monetary Order calculated as follows:

February rent shortfall	\$ 355.00
March rent	1,100.00
April rent	1,100.00
May rent	1,100.00
June rent	1,100.00
Filing fee	<u>50.00</u>
<b>TOTAL</b>	<b>\$4,805.00</b>

## Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$4,805.00** for service on the tenant.

December 8, 2010