

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

This month to month tenancy was to start July 2010 with a monthly rent of \$1080.00, the tenant paid a security deposit of \$540.00.

The landlord testified that the tenant paid a security deposit in May 2010 to rent the unit June 1, 2010 but then called the landlord and advised him that she would not be renting the unit. The landlord stated that he was not able to find renters for the month of June 2010 and subsequently suffered a loss of 1 month's rent for a total of \$1080.00. The landlord stated that he advertised the rental unit by placing an ad on craigslist and placement of a 'for rent' sign on the neighbouring building which is part of this complex.

The tenant testified that in May 2010, while residing in unit 106, she approached her landlord about renting unit 102 with her friend and gave the landlord a security deposit for unit 102. Shortly thereafter the tenant's friend determined that she was not going to be able to move due to financial reasons and June 1, 2010 the tenant advised the landlord that they would not be renting unit 102. The tenant stated that unit 102 had been empty for a number of months prior to her approaching the landlord about renting the unit. The tenant stated that the landlord told her he would return her security deposit if he was able to rent unit 102 in June and suffered no loss of rent, the \$540.00 security deposit has not been returned. The tenant stated that there are always empty rental units in the complex and that she did not believe the landlord had taken adequate steps to mitigate his loss.

Law

Residential Tenancy Policy Guideline # 5 speaks to the "Duty to Minimize Loss," and provides in part as follows:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for loss of rent.

The landlord is seeking to recover rent for June 2010 and as the landlord did not have final verification from the tenant until June 1, 2010 that she would not be renting the unit, it would have improbable for the landlord to have new tenants for June 1, 2010. However while the landlord had the option of placing rental ads in the local newspapers to mitigate the loss suffered by the landlord and rent the unit during the month of June 2010, there is no evidence that they did so.

Accordingly, I find that the landlord has established entitlement to compensation in the limited amount of \$540.00. The landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$540.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$540.00 security deposit in full satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$50.00**.

A monetary order in the amount of **\$50.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 11, 2011

Dispute Resolution Officer