



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. However on October 20, 2010, in another dispute resolution hearing, the Landlord was ordered to return the Tenants' security deposit to them. The Landlord's application for a Review of that decision was dismissed on December 13, 2010. Consequently, I find that the issue of the security deposit has already been dealt with and as a result, that part of the Landlords' claim is dismissed without leave to reapply.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income?

Background and Evidence

This fixed term tenancy started on September 1, 2009 and was to expire on May 31, 2010 (although the tenancy agreement says 2009 in error) however the Tenants moved out on or about March 15, 2010.

The Tenants advised the Landlords in early March 2010 that they would be ending the tenancy early. In a responding letter dated March 5, 2010, the Landlords advised the Tenants that they would be responsible for paying rent for April and May 2010 if the rental unit could not be re-rented. On April 6, 2010, one of the Landlords advised the Tenants that a new tenant had been found for May 1, 2010 and therefore the Tenants would not have to pay rent for that month. The Landlords now claim that the new tenants did not move in until June 1, 2010 and they provided a signed tenancy agreement to that effect.

The Tenants argued that they had an agreement with the Landlords that they did not have to pay rent for May 2010 and that the Landlords only changed their minds after they were ordered to return the Tenants' security deposit in the last hearing. The Landlords admitted that they only sought to recover rent for May 2010 when they were ordered to repay the Tenants' security deposit with a penalty. The Landlords argued

however, that they only agreed that the Tenants did not have to pay rent for May 2010 if the new tenant moved in on May 1, 2010 but they did not.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy (by giving one clear month's prior written notice). If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he or she incurs as a result.

I find that the Landlords only agreed to relieve the Tenants from paying rent for May 2010 if a new tenant moved in that month. I find it very suspicious that the Landlords did not advise the Tenants that their new tenant did not move in until June 1, 2010 and seek to recover an alleged loss of rental income for May until 8 months after the tenancy ended. However, the Tenants did not provide any evidence to suggest that the new tenants did, in fact, reside in the rental unit as of May 1, 2010 as they were earlier told by the Landlords. Consequently, I find that the Landlords are entitled to recover a loss of rental income for May 2010 in the amount of \$1,350.00.

The Landlords also applied to recover the filing fee for this proceeding however I find that this is not an appropriate case to do so. In particular, the Tenants argued that they were prepared to pay May 2010 rent in advance but only put a stop payment on that cheque because the Landlords said they did not have to pay. The Tenants said they were unaware that the Landlords wanted them to pay this amount until they received the Landlords' hearing package in this matter. The Tenant said they were prepared to pay this amount and do not understand why the Landlords did not just ask them to pay it. I find that this is a reasonable argument. In particular, I find that this proceeding likely would have been unnecessary had the Landlords advised the Tenants that the new tenants did not move in on May 1, 2010 and asked the Tenants to replace their cheque for May. Consequently, the Landlords' application to recover the filing fee for this proceeding is dismissed without leave to reapply.

Conclusion

A Monetary Order in the amount of **\$1,350.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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 19, 2011.

Residential Tenancy Branch