

DECISION

Dispute Codes MNDC & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim due to loss of rent resulting from a breach of the tenancy agreement by the tenants.

The landlord appeared, provided affirmed oral testimony and submitted documentary evidence in advance of this hearing in accordance with the rules of procedure.

The landlord testified that her agent attempted to serve the tenants in person on October 25, 2010 at their place of business. The tenants refused to accept the documents, so the landlord had the documents sent by registered mail to the tenants' place of employment.

Section 89 of the *Act* provides that documents may be served to a respondent in person, and service can be completed in person anywhere. I am satisfied that service was attempted on the tenants in person but they refused to accept them. Pursuant to policy guideline #12, Service Provisions, service in person can be completed or considered completed by the following actions:

This requires actually handing a copy of the document to the person being served. If the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

Section 89 of the *Act* also provides that if a respondent is a tenant and a tenant is served by registered mail, it must be sent to an address where the tenant resides. I accept that the landlord sent the documents to the tenants' place of employment and not to the addresses where the tenants reside. However, I accept the evidence provided by the landlord that one of the tenants e-mailed her after attempted delivery of the registered mail packages requesting that the landlord not contact the tenant and that the tenant had returned the registered mail package to the landlord.

Section 71(2) of the *Act* provides that the director can determine that a document has been sufficiently served for the purposes of the *Act*.

I find that the tenants are, or ought to be, aware of the claim being made against them due to their breach of the fixed term tenancy agreement and I find that the tenants are

deliberately avoiding being served with notice of the landlord's claim for damages against them. I am satisfied that the landlord's agent attempted to serve the tenants in person and I am satisfied that the tenants were aware of the nature of the documents. I also accept that the landlord then took an additional step to send the documents to the tenants by registered mail.

Based on these attempts, I find that the landlord has attempted to sufficiently serve the tenants with notice of this application and hearing and that the tenants have deliberately avoided service. I find that the landlord has met her obligations under section 89 of the *Act* to serve the tenants and I proceeded with the hearing in the tenants' absence.

Issue(s) to be Decided

Did the tenants breach the fixed term tenancy agreement entitling the landlord to monetary relief due to loss of rent?

Background and Evidence

The parties entered into a fixed term tenancy commencing August 1, 2010 and ending effective July 31, 2011. The monthly rent due on the 1st of each month was \$1,900.00 and the tenants paid a security deposit of \$950.00 on July 1, 2010.

On August 31, 2010 the tenants sent a notice to end their tenancy to the landlord by e-mail effective September 30, 2010. The indicated to the tenants that they should make attempts to find new renters to assume their lease. The landlord stated that the tenants did place one advertisement but did not ever present a potential new renter. The landlord stated that she had an agent post some other advertisements as well in September 2010.

The landlord stated that despite repeated advertizing to ensure that the rental unit was prominently displayed on the web sites, she was not receiving a lot of interest in the rental unit. The landlord made the decision to start reducing the asking rent in an attempt to attract more renters. The landlord stated she was unable to secure new renters for October but did find new renters effective November 1, 2010. However, the landlord stated that she was only able to negotiate the monthly rent of \$1,580.00 or a \$320.00 per month difference in the rent paid by the tenants under their fixed term lease.

The landlord seeks the following claim in damages against the tenants:

- Loss of rent for October 2010 in the amount of \$1,900.00;

- Loss of rent difference between old lease and new lease of \$320.00 for nine months in the amount of \$2,880.00; and
- Cost of reimbursement for her agent to complete duties of showing the rental unit and securing new renters in the amount of \$220.00

Analysis

Based on the evidence before me and on the balance of probabilities, I find as follows:

I accept that the tenants breached a fixed term tenancy and as a result were obligated to find prospective new renters to assume their tenancy or to find sub-tenants to complete their obligations to the tenancy agreement. In addition, because the tenants did not take reasonable measures to assign or sublet the tenancy, they then became liable for loss of rent experienced by the landlord due to their breach of the tenancy agreement.

I accept the evidence of the landlord that she took reasonable steps to mitigate or minimize the loss experienced by advertizing the rental unit and trying to find new renters. I also accept that due to a change in the rental market the landlord was unable to find new renters for October 2010 and could not rent the unit for the rent which was to be paid under the tenancy agreement.

Therefore, I grant the landlord's application in part and accept that the tenants are responsible for the landlord's loss of rent of \$1,900.00 for October 2010 and for the landlord's loss of rent of \$320.00 for the remaining nine months of the fixed term lease in the amount of \$2,880.00.

I deny the landlord's claim for expense related to hiring an agent to conduct her business in the amount of \$220.00 because the landlord failed to provide any evidence to verify this claim.

Although the landlord did not request in this application to retain the tenants' security deposit in partial satisfaction of this claim, I order pursuant to section 72 of the *Act* that the landlord may retain the security deposit against the claim established due to the tenants' breach of the tenancy agreement. I also grant the landlord's request to be reimbursed for the \$100.00 filing fee paid for this application.

Conclusion

I find that the landlord is entitled to a monetary Order in the amount of **\$3,930.00**. This Order may be filed with the Province of British Columbia Small Claims Court 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: February 25, 2011.

Residential Tenancy Branch