

DECISION

Dispute Codes: MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on November 8, 2010 seeking a Monetary Order unpaid rent, loss of rent, and 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 the claims submitted taking into account whether damages are proven, attributable to the tenant, reasonable as to amount sought and whether the landlord has taken reasonable measures to minimize the loss.

Background and Evidence

This tenancy began on September 25, 2010 and ended on October 31, 2010 under notice to end tenancy given by the tenant on October 1, 2010 and on October 19, 2010 under Notice to End Tenancy for unpaid rent served by the landlord on October 8, 2010.

Rent was \$750 and the landlord holds a security deposit of \$375 paid by cheque dated September 18, 2010.

During the hearing, the landlord gave evidence that his claims were based on unpaid rent – a per diem for the first six days of the tenancy from September 25, 2010 at \$25 per day which was the cause for the Notice to End Tenancy of October 8, 2010.

The tenant paid the rent for October 2010, but the landlord claims loss of rent for November 2010 on the grounds that the tenant gave notice on October 2, 2010, two days short of the full month required under section 45 of the *Act* for Notice to End Tenancy by a tenant.

The tenant gave evidence that he had agreed to the tenancy sight unseen on the basis of a Craigslist advertisement.

The tenant said the advertised “park like setting” was more akin to a junk yard behind the landlord’s house. He said there was a tarp on the roof and the claimed electric back up heating for the wood stove was a single ceramic heater. The ad stated pets were welcomed but on arriving, he was advised by the landlord and the rental agreement stipulates that dogs are not allowed. The tenant stated that the rental unit was in severe need of cleaning when he took possession.

The landlord said he would have allowed pets if the tenant so wished but would have added a pet damage deposit to the agreement. He said the ceramic heater was merely intended as a supplementary source to ensure water pipes didn’t freeze when the tenant was out, and the tenant’s claims as to the cleanliness of the unit were grossly exaggerated. The landlord said that the tarp was to cover a small leak in a corner of the roof and that he had told the tenant it would be repaired in the spring.

The tenant said that he had advised the landlord the day after moving in that the tenancy would not work out and that he would be leaving on October 31, 2010. The landlord advised him that the notice had to be in writing, but the tenant did not provide it to him until October 2, 2010.

The landlord also stated that the tenant had told him that a colleague had offered him a house sitting arrangement and he believed that to be the reason behind the premature end of the tenancy.

The landlord stated that he began advertising on Craigslist the day he received the written notice, but had been unable to get a new tenant for November. The landlord did not supply proof of the advertisement.

Analysis

Section 45 of the *Act* states that a tenant's notice to end tenancy must be served in writing before or on the day before the next rent due date to be effective one month later. In this matter, the tenant would have to have given his notice on September 30, 2010 for it to be effective on October 31, 2010.

It is essential that landlords have written notice in order to avoid liability with a new tenant if the existing tenant were to change their mind or over hold. Therefore, on that requirement, the tenant would clearly be responsible for the loss of rent for November 2010.

However, section 7 of the *Act* requires that a party making a claim for damage or loss under the legislation or rental agreement must do whatever is reasonable to minimize the loss. The landlord states that he advertised on Craigslist but did not provide proof.

Taken together with the fact that the burden of proof lies with the party making the claim, and the fact that landlord had vacant possession as of October 19, 2010, I find that there is some doubt as to the degree of effort the landlord put into finding a new tenant.

Therefore, I find that is entitled to an award of one-half of the loss of rent for November 2010 plus the uncontested claim for the per diem claim of \$150 for September 2010.

I further find that the landlord is entitled to recover the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

One half the loss of rent for November 2010	\$375.00
Per diem rent for September 25 to September 30, 2010	150.00
Filing fee	<u>100.00</u>
Sub total	\$625.00
Less retained security deposit (no interest due)	- 375.00
TOTAL	\$250.00

Conclusion

In addition to authorization to retain the security deposit, landlord's copy of this decision is accompanied by a Monetary Order for, **\$250.00** enforceable through the Provincial Court of British Columbia, for service on the tenant.

March 11, 2011