

## **DECISION**

**Dispute Codes:** MNR, MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlord on March 15, 2011 seeking a Monetary Order for unpaid rent, loss of rent, liquidated damages, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on March 17, 2011, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for the losses arising from the tenant's breach of a fixed term rental agreement.

### **Background and Evidence**

This tenancy began on February 1, 2011 under a fixed term rental agreement set to end on January 31, 2012. Rent was \$875 per month and the landlord holds a security deposit of \$437.50 paid on January 25, 2011.

The tenancy agreement includes a liquidated damages clause under which the tenant agreed to pay the landlord \$300 if the tenant left the fixed term agreement before its expiry date. An addendum to the rental agreement granted the tenant a \$100 moving allowance, chargeable against the tenant's security deposit if the tenant did not remain in the rental unit for six months.

During the hearing, the landlord submitted into evidence a copy of the tenant's notice served on March 2, 2011 advising that his planned employment had not materialized and that he had, in fact, not moved in to the rental unit. The notice also provided the tenant's forwarding address.

The landlord also submitted copies of advertising invoices demonstrating the immediate efforts to find a new tenant.

In fact, the landlord was able get a new tenant for the rental unit on March 12, 2011 and therefore claims only 11 days loss of rent for March 2011.

## Analysis

Section 45(2) of the *Act* provides that a tenant's notice to end a fixed term tenancy cannot take effect on a date that falls before the end of the tenancy date set by the agreement. Otherwise the tenant can be held responsible for losses suffered by the landlord resulting from the tenant's breach.

Section 7(2) of the *Act* imposes a duty on the landlord to take reasonable measures to minimize the loss.

In the present matter, I find that the landlord took those reasonable measures with the fortunate outcome that the tenant is responsible for only 11 days loss of rent.

I further find that the agreement, with respect to the \$300 in liquidated damage, and the addendum, with respect to return of the \$100 move in bonus are lawful and enforceable.

As the landlord's application has succeeded on its merits, I find that the tenant is responsible for the filing fee for this proceeding.

As volunteered on the tenant's notice to end the tenancy, and as authorized under section 72 of the *Act*, I find that the landlord may 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:

Loss of rent for 11 days in March 2011 ( $\$875/31 \times 11$ )	\$310.48
Return of move in bonus as tenant vacated prior to six months	100.00
Liquidated damages as per rental agreement	300.00
Filing fee	50.00
Sub total	\$760.48
Less retained security deposit (no interest due)	- 437.50
<b>TOTAL</b>	<b>\$322.98</b>

## **Conclusion**

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$322.98, enforceable through the Provincial Court of British Columbia for service on the tenant.

June 27, 2011