



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

This fixed term tenancy began November 1, 2010 with monthly rent of \$3000.00 and the tenants paid a security deposit of \$1500.00. On February 22 the tenants gave the landlord notice that they would be vacating the rental unit effective March 31, 2011 and on February 23, 2011 paid the landlord the \$400.00 liquidated damages fee as outlined in #7 of the signed tenancy agreement.

The landlord testified that the tenants had signed a 1 year fixed term tenancy agreement but that the tenants broke the lease when they vacated the rental property March 31, 2011 and not October 31, 2011 which is the specified end of tenancy on the signed lease agreement. The landlord stated that because this is a brand new, very high end home he is very particular about who it is rented to. Prior to this tenancy the property had been vacant for one year during which time appropriate tenants were being screened and when negotiations started with these tenants to enter into a lease, the property was no longer advertised for rent.

The landlord's agent stated that the property has been extensively advertised on Craigslist, the ReMax website, in the Squamish newspaper and on the 'availability list' that is sent to other agents and businesses who may have prospective tenants. The landlord's agent stated that the house was also included in a full page newspaper ad that featured the Squamish 'live, work, play' lifestyle.

The landlord's agent stated that to attract renters the property in mid May 2011 was listed for rent as 2 separate units with the main house renting for \$2200.00 and the suite

renting for \$1100.00. The landlord's agent did comment that renting very high end homes takes time and that the current market is not conducive to attracting renters to these properties.

The landlord's agent stated that prior to signing the lease she explained the terms of the fixed lease to the tenants and had provided extensive information, including a video of the property, to the tenants so that they could make an informed decision prior to leasing the property. When the tenants gave notice the landlord's agent advised the tenants that they would be liable for the loss due to unpaid rent as they were breaking a fixed term lease agreement. The landlord's agent stated that they currently have two parties interested in renting the property and that the landlord in this application is being very reasonable by requesting only 3 months of lost income and not the 5 months loss that he has incurred.

The tenants testified that they had thought it best to move as the home was a new, very high end home and they had small children that could accidentally cause damage. The tenants did understand that they had signed a fixed term lease agreement but felt that the landlord had not suffered a great loss as the landlord still had a very valuable asset.

The landlord stated that he was not open to a settlement of any kind as he has already suffered a significant financial loss. The landlord in this application is seeking compensation of \$9296.67 which is comprised of \$3000.00 rent and \$98.89 utilities for the months of April, May and June 2011.

Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord has met the burden of proving that they are entitled to a monetary order for unpaid rent and utilities.

The landlord's agent provided evidence of what steps were/are being taken to re-rent the property and while it is understood that renting a high end property such as this may take longer than normal. The tenants were well informed that breaking the lease could result in a loss of rental income for the landlord and that they would be liable for this loss. As it were, with the fixed term lease broken by the tenants, the landlord suffered a loss of rental income for the months of April, May and June 2011 and has incurred monthly utility costs with the property untenanted.

Although the tenants did pay the \$400.00 liquidated damages fee as outlined in #7 of the signed fixed term tenancy agreement, the tenancy agreement clearly states that this fee *'covers the landlords agent's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.'*

Accordingly, I find that the landlord has established entitlement to \$9296.67 in unpaid rent and utilities.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$100.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$9296.67 in unpaid rent and utilities. The landlord is also entitled to recovery of the \$100.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$1500.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$7896.67**.

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: August 3, 2011.

Residential Tenancy Branch