

DECISION

Dispute Codes: MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on April 19, 2011 seeking a Monetary Order for loss of rent, carpet cleaning, recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off against the balance owed.

The claim arises from the tenants having left the fixed term agreement prior to the end of tenancy date set by the rental agreement.

As a matter of note, the parties concurred at the beginning of hearing that they were in agreement on all matters except the claim for loss of rent for March 2011.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the contested loss of rent.

Background, Evidence and Analysis

This tenancy began on July 1, 2010 under a fixed term agreement set to end on June 30, 2011. Rent was \$850 per month and the landlord held a security deposit of \$425.

During the hearing, the tenant gave uncontested evidence that she had given notice January 31, 2011 to end the tenancy on February 28, 2011 although she and her co-tenant moved by February 8, 2011.

As a result, the landlord submits the following claims on which the parties have agreed or on which I find as follows:

Loss of rent - \$850. Section 45(2)(b) of the *Act* provides that a tenant's notice to end a fixed term rental agreement may not set an end date that is earlier than the end date set by the agreement which was June 30, 2010 in the present matter. While a tenant who breaches the fixed term agreement by leaving early can be liable for the landlord's consequent losses, Section 7(b) of the *Act* imposes a strict duty on a party suffering a loss due to a breach by the other to do whatever is reasonable to minimize the loss. In the present matter, I accept the evidence of the landlord (a property management company) that they perpetually advertise on at least three web sites in search of tenants. The effort was challenged by timing as many rental units come available with the approaching end of the academic year. I found the tenant to be highly credible and I accept her submission that the building caretaker told her the only consequence to the early departure would be the liquidated damages and cleaning. However, in the absence of written corroboration of that representation, I must rely on the written agreement and the provisions of the *Act*. Accordingly, even though the tenants gave notice and gave up vacant possession early in reasonable time to facilitate a new tenancy for March 1, 2011, I find that they are liable for the loss of rent for that month. The claim is allowed.

Liquidated damages - \$300. Not contested.

Carpet cleaning - \$89.60. Not contested.

Filing fee - \$50. While I find full merit in the application, I find that the tenants may not have breached the fixed term agreement if they had not been assured by the caretaker that there would be no liability for loss of rent. To that extent, I find the landlord contributed to this dispute and should remain responsible for the filing fee.

Security deposits – (\$425.00). The tenants voluntarily agreed that the landlord could retain \$389.60 of the security deposit in set off against the liquidated damages and carpet cleaning on the move-out inspection report signed on February 8, 2011. I hereby authorize and order that the balance may be retained against the loss of rent.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Loss of rent for March 2011	\$ 850.00
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Liquidated damages as agreed	300.00
Carpet cleaning	89.60
Sub total	\$1,239.60
Less retained security deposit (No interest due)	- 425.00
TOTAL	\$ 814.60

Conclusion

In addition to authorization to retain the tenants' security deposits, in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$814.60**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

August 10, 2011