

DECISION

Dispute Codes: MNR (MNDC), MNSD and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of May 17, 2011, the landlord seeks a Monetary Order for unpaid rent/loss of rent, carpet cleaning and recovery of the filing fee for this proceeding after the tenant left the fixed term rental agreement early.

By application of August 10, 2011, the tenant seeks a Monetary Order for return of the security deposit and recovery of her filing fee for this proceeding.

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 and carpet cleaning, and authorization to retain the security deposit in set off or whether it should be returned in whole or part to the tenant.

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 \$1,050 per month and the landlord holds a security deposit of \$525.

During the hearing, the landlord gave evidence that the tenant had given her notice to end the tenancy on March 31, 2011 with an end of tenancy date of April 30, 2011.

While the tenant vacated on April 30, 2011, she did not return the keys or participate in the move-out condition inspection until May 11, 2011.

The landlord stated that new tenants took possession of the rental unit on May 17, 2011 and she seeks the loss of rent for the first 16 days of May 2011 and the cost of carpet cleaning agreed to by the tenant during the inspection.

The tenant stated that she had to leave the tenancy two months before the end of the fixed term because of an ongoing problem with mice in the rental unit. She stated that she had advised the landlord of the presence of mice early in the tenancy.

The parties concurred that the landlord had responded by sending a pest control company and they had continued to monitor the rental unit twice monthly.

The landlord stated that the company had advised her that the problem appeared to be under control. The tenant stated that they had probably reached that conclusion as she had been disposing of mice caught in the sticky traps throughout.

The tenant stated she had decided she could not longer tolerate the problem after finding droppings in her child's cereal supply among other places.

The parties agreed that the tenant had approached the landlord in late fall to see about ending the tenancy early. The landlord concurred if a new tenant could be found but the tenant declined to exercise the option during the winter period.

The landlord stated that she believed the problem was under control until she received the tenant's notice to end the tenancy.

Analysis

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.

Section 45(3) of the *Act* creates an exception to this limit with the provision that, "If a landlord has failed to comply with a material term of the tenancy agreement ...and has not corrected the situation within a reasonable period after the tenant gives **written**

notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In the absence of “written notice” to the landlord, I must find that the tenant cannot rely on section 45(3). Therefore, I find that the tenant is responsible for the landlord’s loss of rent for the period from May 1 to May 16, 2011 of \$552.33 and the cost of carpet cleaning of \$89.60 as agreed. I further find that the landlord is entitled to retain the security deposit in set off against the balance owed.

I decline to award the file fee to the landlord on the grounds that I have found the tenant’s explanation to be within reason although short of satisfying the requirements of the legislation for breaching the fixed term agreement. The tenant’s application is dismissed without leave to reapply.

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

Loss of rent for May 1 to May 16, 2011	\$ 552.33
Carpet cleaning	89.60
Sub total	\$641.93
Less retained security deposit (No interest due)	- 525.00
TOTAL	\$116.93

Conclusion

In addition to authorization to retain the tenant’s security deposits, in set off, the landlord’s copy of this decision is accompanied by a Monetary Order for **\$116.93**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

August 26, 2011