

DECISION

Dispute Codes: Landlords' Application: MNR, MNSD and FF
 Tenant's Application: MNSD and FF

Introduction

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

By application of August 2, 2011, the landlords seek a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of May 11, 2011, the tenant seeks return of the security deposit and recovery of the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award for unpaid rent and the disposition of the security deposit.

Background and Evidence

This tenancy began on January 24, 2008 under a six month fixed term agreement which became a month to month tenancy at its conclusion. Rent was \$1,600 per month and the landlord holds a security deposit of \$800.

During the hearing, the parties gave evidence that the tenancy had ended on or about March 1, 2011 after the landlord had advised the tenant informally in January 2011 that he would be proceeding with planned construction in the spring and would be giving two-month Notice to End Tenancy for landlord use.

While the landlord had not served the notice, the tenant did not pay the rent for February 2011 and vacated at the end of that month without giving written notice. Consequently, the landlord refused to return the tenant's security deposit.

Analysis

As to the tenant's application, section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a deposit or file for dispute resolution to claim against it.

Section 38(6) of the *Act* states that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the deposit.

In the present matter, I find that the landlord did not comply with section 38(1) by making application for dispute resolution to claim on the deposit or return the full amount within the 15 days allowed.

Therefore, I find that the landlord owes the tenant double the \$800 of the security deposit, \$1,600 plus \$11.25 in interest.

As to the landlords' application, the tenant gave evidence that she had withheld the February rent because the landlord had given her notice that the tenancy would be ending to accommodate construction.

Section 51 of the *Act* does provide for tenants to receive the equivalent of one month's rent when notice is given for landlord use. However, in the present matter, the landlord had not served written notice on the approved form which he stated he intended to do at the appropriate time. In effect, there was no notice for landlord use. As a result, the tenant was not entitled to withhold the rent for February 2011 nor to leave the tenancy without giving notice to the landlords. Therefore, I find that the tenant owes the landlords the February 2011 rent of \$1,600.

Having found that each of the parties owes the other the same amount of \$1,600, I find that the claims are offsetting to that extent.

As to the \$11.25 interest owed to the tenant by the landlords, while the amount is sufficiently small to make issuance of a Provincial Court of British Columbia impractical,

under the authority of section 67 of the *Act*, I hereby direct the landlord to pay the \$11.25 to the tenant forthwith.

Conclusion

The tenant is awarded \$1,600 in doubled security deposit and the landlord is awarded \$1,600 in unpaid rent for February 2011. As the awards are offsetting, I order the landlords to pay the tenant \$11.25 interest earned on the security deposit from January 24, 2008 to date.

August 22, 2011