



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MDC and FF

Introduction

This application was brought by the landlord October 25, 2011 seeking a Monetary Order for unpaid rent, liquidated damages, a charge for a cancelled cheque, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

As a preliminary matter, while the original application named the City of Vancouver as landlord, representatives of the property management company which has taken over management of the rental complex concurred that their company is more appropriately named as applicant in this matter. Therefore, I have amended the style of cause accordingly.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to the monetary compensation sought.

Background and Evidence

Neither party submitted a copy of the rental agreement into evidence. They agree that it was signed on July 12, 2011, but the landlords believes the tenancy started on July 19, 2011 and the tenant stated it was August 1, 2011. The agreement was for a fixed term set to end on July 31, 2012 according to the landlord and it granted free rent for the first and last months of the tenancy.

Evidence was given that the tenant had given written notice on August 31, 2011 that he would not be continuing with the tenancy, and he vacated, in fact, in mid September.

The tenant gave three reasons for having breached the fixed term agreement:

1. When he was viewing and considering the property, the landlords failed to disclose the material fact that 40 percent of the rental complex was subsidized housing, a bare fact that he would not have objected to were it not for a number of co-incident social problems he observed including signs of prostitution;
2. The complex hosted a movie night every Thursday in a facility below his rental unit resulting in noise disturbance to midnight, and it included PG rated films which he found inappropriate for a community based facility and which disturbed the sleep of him and his six-year old child;
3. There were a number of deficiencies in the rental unit, including problems with the lighting.
4. The tenant stated that he had brought these factors to the attention of the landlord and requested release from the fixed term agreement, but the landlord refused.

During the hearing, the landlords gave uncontested evidence that the tenant had stopped payment on the cheque submitted to pay the rent due on September 1, 2011, yet had remained in the rental unit .

Therefore, the landlords request a Monetary Order for the September 2011 rent, a \$25 returned cheque fee, liquidated damages of \$1,400, recovery of the filing fee for this proceeding and authorization to retain the security deposit.

Analysis

I find on each of the landlord's claims as follows:

Unpaid rent - \$1,400. Section 26 of the *Act* states that: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this

Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” I find that the tenant had no right under the Act to withhold the rent for September 2011. This claim is allowed.

Liquidated damages - \$1,400. An amount claimed in liquidated damages is normally measured against a reasonable assessment of the costs of finding a new tenant for the rental unit. However, in the present matter, the landlord, a professional property management company, has not submitted a copy of the rental agreement. Therefore, I dismiss this part of the claim.

I further note that the landlord’s advice that the rental unit remained vacant at the time of the hearing would tend to support the tenant’s claim of the undesirability of the rental unit. At the same time, I take the same fact as evidence that the tenant did not exercise an appropriate amount of due diligence before committing to the tenancy.

Returned cheque charge - \$25. The tenant did not deny the landlord’s claim that he had cancelled the cheque submitted for the September rent. This claim is allowed.

Filing fee - \$50. I find sufficient merit in the application to award the filing fee claim to the landlord.

Security deposit – (\$700). As authorized under section 72 of the Act, I order that the landlord 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:

Rent for September 2011	\$1,400.00
Filing fee	<u>50.00</u>
Sub total	\$1,475.00
Less retained security deposit	- 700.00
TOTAL remaining owed by the tenant to the landlord	\$ 775.00

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 \$775.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: January 13, 2012.

Residential Tenancy Branch