

DECISION

Dispute Codes:

MNR; MNSD; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and liquidated damages; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord's agents testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were sent, via registered mail, to the Tenant's mother's address on September 11, 2012.

The Tenant attended the Hearing and therefore I am satisfied that she was sufficiently served for the purposes of this Act, pursuant to the provisions of Section 71 of the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation for unpaid rent for the month of September and liquidated damages pursuant to the tenancy agreement?
- May the Landlord apply the security deposit towards payment of its monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy was to begin on September 1, 2012, however the Tenant did not move into the rental unit. The tenancy agreement is a one year lease, ending August 31, 2013. Monthly rent is \$925.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$462.50 on August 17, 2012. The tenancy agreement contains a clause providing that the Tenant pay liquidated damages in the amount of \$250.00 in the event that she ends the tenancy before the fixed term.

The Landlord's agents testified that the Tenant and her mother viewed the rental unit before the Tenant signed the tenancy agreement on August 17, 2012. They stated that during the last week of August, the Tenant called the Landlord to advise that her baby daughter had just been diagnosed with an allergy to carpets and that she was not going to be able to move in. The Tenant followed up the phone call with written notice that

she was, “formally rescinding the rental contract”. A copy of the letter, dated August 25, 2012, was provided in evidence. The Landlord’s agent testified that they received the letter on September 7, 2012, by registered mail.

The Landlord’s agents stated that they offered the Tenant another suite that was vacant in the rental property, one that had hardwood floors instead of carpet, but that the Tenant did not accept the Landlord’s offer.

The Landlord’s agents stated that they advertised the rental unit in two different on-line sites as soon as they got the Tenant’s written notice that she was not going to move in. They stated that they had shown the rental unit 9 times between September 11 and October 3, 2012. The Landlord had other vacant suites in the rental property and rented most of them for October 1, 2012, but not the rental unit. The Landlord seeks unpaid rent for the month of September, 2012.

The Tenant stated that when she viewed the suite, she saw burn marks in the carpet and that it needed new paint. She stated that she felt that she had been pushed into signing the rental agreement. She testified that when she signed the tenancy agreement she did not know that her daughter was allergic to carpets. She also stated that the Landlord had promised to install new carpets and to freshly paint the rental unit before she moved in.

The Landlord’s agents testified that the Landlord did not promise to replace the carpet, except the caret in the entry which they did replace. The kitchen and bathroom were also provided new linoleum and the paint was touched up.

The Tenant acknowledged that the Landlord had offered another suite with hardwood floors, but stated that she was upset that they had not shown her that suite in the first place because it was much nicer. The Tenant stated that an hour after she signed the tenancy agreement, she got a call about another place which was perfect for her.

Analysis

I find that the Landlord has provided sufficient evidence to prove its claim for unpaid rent for the month of September and for liquidated damages for the following reasons:

- The Tenant viewed the rental unit and signed a tenancy agreement on August 17, 2012. The Tenant did not provide sufficient evidence that she was coerced into signing the agreement and I find that it is a legally binding agreement.
- The Landlord gave the Tenant an option to rent a suite in the same rental property that did not have carpets, and the Tenant declined the Landlord’s offer.

- The Landlord did not receive the Tenant's written notice to end the tenancy until September 7, 2012. This notice does not comply with the provisions of Section 45 (2) of the Act.
- I find that the clause in the tenancy agreement with respect to liquidated damages is reasonable and not a penalty.
- The Landlord suffered a loss for the month of September because of the Tenant's actions. I find that the Landlord made reasonable attempts to mitigate its loss by offering an alternative suite and by advertising the rental unit in a timely fashion.

Therefore, I find that the Landlord has established a monetary award in the total amount of **\$1,175.00** (\$925.00 + \$250.00).

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the **\$462.50** security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Un paid rent and liquidated damages	\$1,175.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,225.00
Less security deposit	<u>- \$462.50</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$762.50

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$762.50** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 03, 2012.

Residential Tenancy Branch