



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD and FF

Introduction

This hearing was convened on the landlord's application of November 13, 2012 seeking a monetary award for unpaid rent, liquidated damages and recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as requested?

Background and Evidence

The landlord and tenant signed a one-year fixed term rental agreement on September 4, 2012 for a tenancy to begin on October 1, 2012. Rent was \$1,275 per month and the landlord holds a security deposit of \$637.50 paid on September 4, 2012.

During the hearing, the landlord gave evidence that the tenant had booked her move-in for October 1, 2012 but the tenant stated her moving company had been unable to do the move until October 3, 2012. The tenant had said she had forgotten her cheque book on October 1, 2012 and was to pay the rent on October 3, 2012 but hadn't done so.

The tenant gave evidence that while moving in on October 3, 2012, she had seen a number of silver fish in the rental unit and, having a strong aversion to insects, declined to proceed with the tenancy, although she did not return the keys and participate in the move-out condition inspection until October 15, 2012.

The tenant reported the silver fish to the landlord on October 3, 2012. The landlord contacted a pest control company that day and they confirmed and treated the unit for silver fish the following day. The pest control company conducted a follow up inspection on October 16, 2012 and reported that the problem had been eradicated.

The landlord was able to find a new tenant for November 1, 2012 and now seeks payment of the October 2012 rent, liquidated damages of \$300 as per the rental agreement, recovery of the filing fee and authorization to retain the security deposit in set off against the balance.

Analysis

Section 45(2)(b) of the *Act* states that a tenant's notice to end a fixed term rental agreement may not have an end of tenancy date earlier than the end date set by the rental agreement, September 30, 2013 in the present matter.

Section 45(3) creates an exception if there is a material breach of the agreement, but only if the landlord has not corrected the breach within a reasonable time of notice.

I find that the landlord acted expeditiously to correct the problem and the tenant did not have a right to repudiate the rental agreement.

However, I do find that the tenant had a claim in damages to a degree for loss of quiet enjoyment and possibly for alternate accommodation during the treatment period and I set the value of those losses at \$350, an amount equal to the landlord's claim in liquidated damages and filing fee.

Therefore, I find that the landlord is entitled to a monetary award for the rent for October 2012 in the amount of \$1,275.

As authorized under section 72 of the *Act*, I hereby order that the landlord retain the tenant's security deposit of \$637.50 in set off and issue the landlord with a Monetary Order for the balance of \$637.50.

Conclusion

In addition to authorization to retain the tenant's security deposit, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$637.50 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: February 12, 2013

Residential Tenancy Branch

