

DECISION

Dispute Codes: MNR, MNSD, FF

Introduction

This is the Landlord's application for a monetary order for unpaid rent; to keep the security deposit; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The tenancy agreement, a copy of which was entered in evidence, was a 12 month fixed term lease commencing August 1, 2008. At the end of the fixed term, the tenancy was to continue on a month-to-month basis. Rent was \$1,495.00 per month. The Tenant paid a security deposit in the amount of \$747.50 on July 23, 2008.

The Landlord's agent testified that the Tenant moved out of the rental unit before the end of the fixed term, at the end of May, 2009. The Landlord re-rented the suite on June 22, 2009, for \$1,350.00 per month. The Landlord applied for a monetary order to include: costs of re-renting the rental unit; a moving fee charged by the strata corporation; pro-rated loss of rent for June 1 to 21, 2009; the cost of running a credit report check on the new tenant; and loss of rent in the amount of \$145.00 for the month of July, 2009.

The Tenant testified that she sought to sublet the rental unit and gave her written notice on April 27, 2009 for the end of May, 2009. The Tenant stated that she had married and wanted to move into her husband's residence. The Tenant testified that she had found someone who was interested in subletting the rental unit and provided the Landlord with his name. The Tenant stated that the Landlord did not meet with the interested person, nor invite him to complete an application for tenancy.

The Tenant testified that the Landlord denied her request to sublet the suite, saying that her request was not based on personal necessity.

The Tenant testified that she was not provided with a copy of the strata bylaws regarding the \$100.00 moving fee.

Analysis

The Tenant, upon being denied written consent of the Landlord to sublet the suite, requested reasons for the denial. She provided documentary evidence of e-mail correspondence between the Tenant and an agent of the Landlord. The Landlord's agent writes, in part, "your request to sublet is not based upon any personal necessity, pressing circumstances or change in personal situation; it is more a wish to do so without substantiation of a need."

The Tenant had advised the Landlord that she had married. She wished to live with her husband. She found an interested party to sublet the suite, but the Landlord declined to interview him, or invite him to apply for tenancy. I find that the Landlord's consent was unreasonably withheld and in contradiction of a term in the tenancy agreement, which states in paragraph 9, "The Tenant shall not assign or sublet the premises without the prior written consent of the Landlord. If this tenancy agreement is for a term of six months or more, such consent shall not be arbitrarily or unreasonably withheld by the Landlord."

The Landlord requested compensation in the amount of \$100.00 for moving fees charged by the Strata. The Tenant testified that she did not have a copy of the strata bylaws regarding this charge. This is the Landlord's application and the onus is on the Landlord to prove its claim. The Landlord did not provide a copy of a Form K, signed by the Tenant, indicating that she received the strata bylaws and agreed to comply with them.

The Landlord's application for a monetary order is dismissed without leave to reapply. The Landlord has not been successful in its application and is not entitled to recover the cost of the filing fee from the Tenant.

The Landlord provided a copy of the Condition Inspection report and security deposit refund form. There is no indication of repairs, carpet cleaning or general cleaning required at move-out. In the "remarks" section, the Landlord has noted that the property was left in overall good condition. The Tenant is entitled to return of her security deposit, together with accrued interest in the amount of \$4.96, for a total of \$752.46.

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$752.46. This Order must be served on the Landlord and 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: October 1, 2009.
