



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order compensation for damage or loss; 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 parties gave affirmed testimony at the Hearing.

It was established that the Tenant was served with the Notice of Hearing documents and copies of the Landlord's documentary evidence by registered mail on May 16, 2011.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of revenue for the month of May, 2011?

Background and Evidence

The Tenant signed a tenancy agreement with the Landlord on April 5, 2011, and paid a security deposit in the amount of \$480.00 on the same day. The tenancy commenced May 1, 2011, and was for a one year fixed term. Rent is \$960.00 a month. In addition to rent, there is a \$25.00 monthly parking fee.

The Landlord seeks loss of revenue for the month of May because the Tenant and/or the Tenant's agent did not move into the rental unit. The Landlord was able to re-rent the rental unit for June 1, 2011.

The Tenant's agent testified that the Tenant is her 75 year old mother who was securing the rental unit for her. The Tenant's agent testified that the Landlord's agent made promises to the Tenant that the bathroom would be renovated before the Tenant's agent moved in, but it was not. The Tenant's agent testified that when she saw the rental unit for the first time on the day she was to move in, she was appalled at its state of disrepair and the general uncleanliness of the rental unit.

The Tenant's agent testified that she and the Landlord's agent had an agreement that the Landlord could keep the security deposit and in return the Landlord would not pursue the Tenant for loss of income for May, 2011. The Tenant's agent testified that after she had made this agreement, she changed her mind and sent the Landlord a letter demanding return of the security deposit. The Tenant has not filed an application for return of the security deposit.

The Landlord's agent agreed that there was an agreement that the Landlord would not pursue the Tenant for compensation in return for keeping the security deposit. The Landlord's agent submitted that once the Tenant sent the Landlord written demand for the security deposit, the Landlord had no choice but to file against the security deposit or face the possibility of having to pay double the security deposit back to the Tenant.

Analysis

Based on the testimony of both parties, I find that the parties had an agreement that the Landlord would keep the security deposit of \$480.00 and in exchange would not pursue the Tenant for loss of income.

Therefore, I find that the Landlord is entitled to retain the security deposit, but not to compensation for loss of income for the month of May, 2011. I find that the Landlord is also entitled to recover the cost of the filing fee from the Tenant and provide the Landlord with a Monetary Order in the amount of \$50.00.

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of \$50.00 against 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: August 25, 2011.
