



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

These applications were brought by both the tenants and the landlord.

By application of July 18, 2008, the tenants seek return of their security deposit in double after the landlord failed to return it or make application to claim upon it within the latter of 15 days of the end the tenancy or receipt of the tenants' forwarding address as required by section 38(1) of the *Act*.

By application of July 28, 2008, the landlord seeks to recover the cost of finding new tenants as prescribed in the rental agreement.

Issue(s) to be Decided

Whether the tenants are entitled to return of their security deposit in double and whether the landlord is entitled to recover the full cost of finding new tenants.

Background and Evidence

This tenancy began October 1, 2007 under a 12-month fixed term agreement. Rent was \$1,395 per month and the landlord holds a security deposit of \$697.50 paid on September 15, 2007.

The tenants vacated the rental unit on June 30, 2008, three months prior to the expiry of the fixed term agreement.

That agreement contains a clause stating that, if the tenants leave the tenancy before the end date, they agree to be held liable for any re-leasing costs incurred by the landlord including vacant periods.

In this instance, there was no vacant period. However, the landlord contracts with a company called Gold Team which charges him one-half month's rent (\$697.50) to find and screen potential new tenants. The landlord seeks to recover that plus a surcharge for running credit checks.

As to the tenants' claim, they submit that they provided the landlord with their forwarding address, during the move-out inspection, a claim contested by the landlord. The tenants' son who was present at the time gave evidence that he distinctly recalled his mother providing the landlord with the forwarding address. He said the matter was clear in his mind as the landlord did not have the inspection form at the initial inspection, left and returned with the form at which time he saw his mother add the forwarding address.

The inspection found no issues with the condition of the rental unit.

Analysis

Given the level of detail provided by the tenants' son and the obvious incentive for the tenants to make certain the landlord had the forwarding address to recover their security deposit, I am persuaded that the landlord was presented with the tenants' forwarding address at the move-out inspection.

Therefore, I find that the tenants are entitled to return of their security deposit in double as provided for in section 38(6) of the *Act* when the landlord has not met the requirements of section 38(1).

As to the landlord's claim, I am disallowing the charge for performing credit checks on applicants as a cost of doing business and as a cost that would reasonably have been absorbed by the one-half month's rent charge for ending lease early.

The landlord was advised that attempting to include a liquidated damages clause without a specific dollar figure may very well render the clause unenforceable. Such clauses must represent a reasonable estimate of the landlord's real costs and must not incorporate a penalty.

However, in this instance, the tenants stated that they simply wished to recover the equivalent of their initial security deposit and do not contest the claim for finding new tenants. I note that the tenants' notice was submitted one day late. Therefore, I will allow the landlord's claim to stand.

As I find merit in both applications, each party remains responsible for their own filing fees.

The claims balance as follows:

Security deposit due to tenant	\$ 697.50
Interest on security deposit (Sept. 15, 2007 to date)	10.77
To double security deposit	697.50
Sub total	\$1,405.77
Less cost of re-renting unit due to landlord	- 697.50
TOTAL	708.27

Conclusion

Thus, the tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$708.27.

September 24, 2008
