



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss; a monetary Order for damage to the rental unit; a monetary Order for unpaid rent; to retain all or part of the security deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Tenant via registered mail at the service address noted on the Application, on August 19, 2009. The Landlord submitted a receipt from Canada Post that corroborates that statement. The Landlord stated that the Tenants provided her with this service address at the end of the tenancy. The Landlord submitted a copy of a Condition Inspection Report that corroborates this statement. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue for a portion of this fixed term tenancy; for compensation for a "move-in" and a "move-out" fee that was charged by the strata council; for compensation for damages done to this rental unit; to keep all or part of the security deposit and pet damage deposit; and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that indicates the parties entered into a fixed term tenancy that was scheduled to begin on February 27, 2009 and end on August 27, 2009; that the Tenants were required to pay monthly rent of \$1,837.00 on the twenty-seventh day of each month; and that the Tenants paid a pet damage deposit of \$900.00 and a security deposit of \$900.00 on January 28, 2009. The tenancy agreement was signed by both Tenants and the Landlord on February 28, 2009.

The Landlord submitted a copy of an addendum to the tenancy agreement that was also signed by all parties on February 28, 2009. This addendum stipulated that the Tenants must pay a \$100.00 "move-in fee" and a \$100.00 "move-out" fee if it is "demanded by Strata Council".

In a written submission the Tenants contend that at the beginning of the tenancy the Landlord advised them that she was disputing the "move-in fee" and the "move-out fee" and that she would only charge this if she was unsuccessful in her dispute. The Landlord submitted an invoice from Proline Management that establishes she has been billed for these fees. She stated that the rental unit was sold on September 30, 2009 and that these invoices were paid out by her lawyer of the proceeds of the sale.

The Landlord stated that the Tenants vacated the rental unit on August 06, 2009 and that they paid pro-rated rent of \$651.86 for the period between July 27, 2009 and August 06, 2009. She is seeking compensation for the remaining rent that is due for the period between August 07, 2009 and August 27, 2009.

The Landlord stated that the Tenants had expressed an interest in ending the tenancy early and that she advised them that would be agreeable to her if the Tenants were able to find new tenants for the rental unit or she was able to sell the rental unit. In their written submission the Tenants acknowledge that they were interested in ending the tenancy early.

In their written submission the Tenants contend that the Landlord was in the process of selling the rental unit during the latter portion of this tenancy. The Tenants stated that problems related to providing proper notice for showing the rental unit to prospective buyers arose and the Landlord's real estate agent approached them to see if he could mediate an early end to the tenancy. The Tenants declared that on May 06, 2009 the real estate agent advised them that the Landlord had agreed that they could end the tenancy on August 04, 2009 and that they could pay for any additional days on a "per diem" basis, providing they would allow the real estate agent to show the rental unit with minimal notice. After requesting written confirmation of the agreement, the Tenants received an email from the Landlord. The email, dated July 07, 2009, was submitted in evidence.

The email from the Landlord reads: This will confirm the arrangements between you and Brad yesterday: You will allow access on short notice to real estate agents who wish to show my condo without the official notice as required under the Act. And you have agreed to have the unit in "squeaky clean" condition. You have also agreed to deal directly with each other rather than through me. If you wish to pay on a per diem basis, I'm OK with that.

The Landlord stated that she did not agree to end this tenancy on August 04, 2009 and that she did not authorize her real estate agent to enter into an agreement to end this tenancy. She initially stated that she had "no idea" of what she meant in her email

dated July 07, 2009 and subsequently stated that she likely meant that the Tenants could deal directly with the real estate agent when arranging showings.

The Landlord submitted a Condition Inspection Report that was signed by the male Tenant on August 06, 2009, in which the Tenant agreed to allow the Landlord to retain \$45.00 from the security deposit that was paid.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,837.00 on the twenty-seventh day of each month. I find that this fixed term tenancy began on February 27, 2009 and was to end on August 27, 2009.

After considering the contradictory evidence regarding an agreement to end this fixed term tenancy early, I favor the evidence of the Tenants over the evidence of the Landlord. In reaching this conclusion, I was strongly influenced by the email sent to the Tenants by the Landlord on July 07, 2009. Although the email does not specifically declare that the Landlord agreed to end this fixed term tenancy on August 04, 2009, it corroborates the Tenant assertion that the Landlord's real estate agent negotiated an early end to this tenancy on behalf of the Landlord. I find that the Landlord's reference to being "OK" with paying on a per diem basis strongly corroborates the Tenants' position. I also find it highly unlikely that the Tenants would agree to waive their rights to proper notice and to keep the rental unit in "squeaky clean" condition unless they were receiving some benefit, such as an early end to the tenancy, particularly since the relationship between the Landlord and the Tenants was not harmonious at the time the agreement was made.

On this basis, I find that the parties agreed to amend the end date of their fixed term tenancy and I, therefore, dismiss the Landlord's claim for compensation for loss of revenue any period in August of 2009.

I find that the Tenants agreed, in writing, to pay a "move-in" fee of \$100.00 and a "move-out" fee of \$100.00, if those fees were demanded by the strata council. The invoices that the Landlord submitted in evidence are sufficient to cause me to conclude that the amounts were demanded by strata council. In the absence of evidence to the contrary, I accept that the Landlord was required to pay these fees when she sold the rental unit on September 30, 2009. On this basis, I find that the Tenants must comply with the terms of the addendum to their tenancy agreement by paying \$200.00 to the Landlord in compensation for these fees.

As the Tenants agreed, in writing, to allow the Landlord to retain \$45.00 from the security deposit that they paid in relation to this tenancy, I find that the Landlord has authority to retain this amount.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$245.00, which is comprised of \$200.00 for the “move-in” and ‘move-out” fees that were charged to the Landlord by the strata corporation and the \$45.00 that the Tenants authorized the Landlord to retain from their security deposit. I hereby authorize the Landlord to retain \$245.00 from the Tenants’ security deposit and I find that the Landlord must return the remaining portion of the security deposit, in the amount of \$1,555.00.

Based on these determinations I grant the Tenants a monetary Order for the amount of \$1,555.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I decline to award the Landlord compensation for the cost of filing this Application for Dispute Resolution, as I find that it is highly likely that the parties could have reached a resolution to this dispute without the need for a hearing if the Landlord was not seeking compensation for loss of revenue, which has not been awarded in this matter.

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 15, 2009.

Dispute Resolution Officer