

DECISION

Dispute Codes MNDC, MNSD, RPP, LRE, OPT, FF

Introduction

This is an application by the Tenants for monetary orders for return of the security deposit, for compensation under the Act or tenancy agreement, to return the Tenants' personal property, to suspend or set conditions on the Landlords' rights to enter the rental unit, to obtain an order of possession for the rental unit and to recover the filing fee for the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. Each party also used a translator, who was also affirmed.

Issue(s) to be Decided

Has there been a breach of the Residential Tenancy Act by the Landlords?

Are the Tenants entitled to the relief they seek?

Background and Evidence

The Tenants rented the basement suite in the residential property owned and occupied by the Landlords. The Tenants paid a security deposit of \$200.00 on or about November 1, 2007. The monthly rent for the unit was \$525.00.

According to the testimony of the Tenants they had paid the Landlords advance rent for November and December of 2009, and for January of 2010. The Tenants had purchased their own property and were preparing it for their move in. They told the Landlords they would soon be moving and spent time renovating or fixing the property.

The Tenants allege that when they returned to the rental unit on or about November 21, 2009, the Landlords had removed their TV, DVD player, CD player, movie camera, some gold items, dishes and clothes. They further allege the Landlords had changed the locks and refused to allow them to possess the rental unit anymore. The Tenants had expected to live in the rental unit until January of 2010. They claim they had

received no notice to end the tenancy and the Landlords are refusing to return their property, their rent paid in advance, or their security deposit. The Tenants provided the Landlords with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The Landlords allege that the tenants ended the tenancy by giving a verbal notice to end the tenancy in early November of 2009. They allege the Tenants moved out on November 15, 2009, of their own accord. According to the Landlords, the Tenants demanded their rent back for ½ of November of 2009, and wanted their security deposit back immediately. An argument occurred and the police had to be called.

The Landlords further allege they went to the rental unit on December 1, 2009, and the only thing left in the rental unit was a “rotting” mattress. They say the Tenants did not pay rent in advance for December of 2009, or for January of 2010. The Landlords do acknowledge they did not return the security deposit.

Lastly, the Landlords tried to assert that the Act did not apply to this tenancy, since they had no written agreements with the Tenants and everything had been done through verbal agreements.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Act applies to this tenancy. The Act acknowledges verbal as well as written tenancy agreements.

The Tenants (Applicants) in this matter had the obligation of proving the claims that have been made against the Landlords (Respondents). The standard of proof required is the civil and administrative law standard, which is, claims must be proven on a balance of probabilities. If proof is established on a balance of probabilities, then the Applicants are entitled to the remedies available under the Residential Tenancy Act, and in some cases the common law.

Proving the claims depends on the evidence provided. The Residential Tenancy Branch Rules of Procedure for hearings defines “evidence” as:

“any type of proof presented by the parties at a dispute resolution proceeding in support of the case, including:

- Written documents, such as the tenancy agreement, letters, printed copies of emails, receipts, pictures and the sworn or unsworn statements of the witnesses;
- Photographs, videotape, audiotape, and other physical evidence;
- ...

Here I find the Tenants had insufficient evidence to prove they had paid the rent in advance, or that they had the items they claim to have had, or that the Landlords took the items as claimed. The Tenants say they had bank statements showing payments to the Landlords, however, these were not submitted in evidence before me and cannot now be submitted in evidence after the hearing (as the Tenants suggested).

The Tenants have also not shown how they are entitled to an order of possession or to have restrictions placed on the Landlords' right to enter the rental unit.

Therefore, I dismiss all the claims of the Tenants, with the exception of the claim for return of their security deposit.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit, plus interest.

The Landlords admitted they had not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, plus interest.

Therefore, I find the Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies in British Columbia.

I find that the Landlords are not entitled to retain any portion of the security deposit or interest.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$453.51**, comprised of double the security deposit (2 x \$200.00) the interest on the original amounts held (\$3.51), and the \$50.00 fee for filing this Application.

The Tenants are given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to

comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Lastly, since neither party appeared to have much knowledge of their rights and obligations under the Act, I have enclosed a copy of a guidebook to residential tenancies, translated into their languages.

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: January 14, 2010.

Dispute Resolution Officer