

DECISION

Dispute Codes

MNSD, MNDC, FF, O

Introduction

This is the Landlords' application for a Monetary Order for compensation for damages or loss; to apply the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony and this matter proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a monetary order in compensation loss of rent for the month of December, 2009?
- Disposition of the security deposit.

Background and Evidence

The following facts were not in dispute:

- This tenancy began on July 24, 2008 and ended on November 30, 2008.
- Monthly rent was \$1,800.00, due on the first day of each month.
- The Tenants paid a security deposit in the amount of \$900.00, on July 25, 2008.
- There was a move-in and move-out condition inspection performed, with both parties present.

The Landlords gave the following testimony:

The Landlords testified that the Tenants gave written notice on October 31, 2009, to end the tenancy on November 30, 2009. The Landlords testified that, on November 8, 2009, the Tenants verbally retracted their notice to end tenancy and asked if they could stay until the end of December, 2009, to which the Landlords agreed. The Landlords stated that on November 25, 2009, the Tenants called the Landlords and advised them that they had found suitable accommodation and would be moving out at the end of November, 2009. The Landlords are seeking compensation for loss of rent for the month of December, 2009, as they were unable to re-rent the rental unit on such short notice.

The Landlords testified that they met with the Tenants to perform a move-out inspection, at which time the Tenants gave permission that the Landlords could apply \$200.00 of the security deposit towards damages to the rental unit. The Landlords testified that they had reluctantly agreed that the Tenants could apply \$500.00 of the security deposit towards November rent. Therefore, the balance of the security deposit being held by the Landlords is \$200.00.

The Landlords requested a monetary order, calculated as follows:

Loss of rent for the month of December, 2009	\$1,800.00
Recovery of filing fee	\$50.00
Less set off of remaining security deposit	<u>-\$200.00</u>
TOTAL	\$1,650.00

The Tenants gave the following testimony

The Tenants denied retracting their notice to end the tenancy on November 30, 2009, and testified that it was the Landlords who asked them to stay until December 31, 2009.

The Tenants agreed that they had given the Landlords permission to retain \$200.00 of the security deposit for damages to the rental unit.

The Tenants testified that they had given their forwarding address to the Landlord when they did the move-out inspection, and asked for double the remaining security deposit ($\$200.00 \times 2 = \400) from the Landlords, pursuant to the provisions of Section 38 of the Act.

Analysis

Section 45(1) of the Residential Tenancy Act (the “Act”) provides that a tenant may give a landlord notice to end tenancy effective on a date that is not earlier than one month after the date the landlord received the notice; and is the day before the day in the month that rent is payable under the tenancy agreement. Section 45(4) of the Act provides that such notice must comply with Section 52 of the Act, which states that the notice must be in writing. The Tenants provided a copy of their notice to end the tenancy in evidence. The Tenants disputed that they had withdrawn their notice and stated that all matters relating to the tenancy were done in writing.

The parties were in dispute with respect to whether the Landlords and Tenants had agreed that the tenancy would end on December 31, 2009, instead of November 30, 2009. Where verbal terms are clear and in situations where both the landlord and tenant agree, there is no reason why such terms can be enforced. That being said, it is evident that, in relying on memory alone, the parties may end up interpreting verbal terms in drastically different ways. Where certain issues and expectations are verbally established between the parties, these terms are always at risk of being perceived in a subjective way by each individual. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes and therefore I find that the tenancy ended on November 30, 2009, in accordance with the Tenant’s written notice. Therefore the Landlords are not entitled to loss of rent for the month of November, 2009.

The Landlords have not been successful in their application and are not entitled to recover the cost of the filing fee from the Tenants.

The Tenants requested that the Landlords pay them double the remainder of the security deposit being held by the Landlord. Section 38 of the Act states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

(emphasis added)

The Condition Inspection Report dated November 30, 2009 and entered in evidence, indicates the Tenants' forwarding address in writing. The Tenants indicated their agreement that the Landlords could withhold \$200.00 only of their security deposit for damages. Both parties agreed that \$500.00 of the security deposit was applied towards November's rent. Therefore, in accordance with the provisions of Section 38(6) of the Act, I order the Landlords to pay the Tenants double the residue of the security deposit in the amount of \$400.00, together with accrued interest on the original security deposit paid July 24, 2009, in the amount of \$5.94

I hereby provide the Tenants with a Monetary Order against the Landlords in the amount of \$405.94.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of \$405.94 against the

Landlords. This Order must be served on the Landlords 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: June 4, 2010