



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened upon joint applications being filed by the landlord and the tenants.

The landlord seeks:

1. A monetary order for compensation for damage or loss;
2. An order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

The tenants seek

1. An order to be allowed to retain the security deposit; and
2. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Background and Evidence

The landlord testified that this tenancy was for a fixed term of 6 months commencing November 16, 2009 and ending May 16, 2010. Rent was fixed at \$2,600.00 per month and the tenants paid a security deposit of \$2,000.00 at the start of the tenancy. The landlord says the tenants vacated the rental unit prior to the end of the fixed term. The tenants say when this tenancy began they paid the landlord \$7,200.00. this sum was

comprised of \$2,600.00 for the first months' rent (November 16-December 16, 2009) and \$2,600.00 as a "last months' rent deposit" as well as a \$2,000.00 security deposit. The tenants say they now realize that the request for last month's rent and the amount of the security deposit contravenes the Act however they were not aware of this at the time. The tenants agree they vacated prior to the end of the fixed term on April 12, 2010. The tenants say they did not pay any further rent to the landlord because she was holding the "last month's" rent deposit of \$2,600.00 and the \$2,000.00 security deposit.

The landlord says the "last month's rent" deposit of \$2,600.00 was applied to the rent for the period March 16 to April 16, 2010. The landlord says this claim is for loss of revenue for the period April 16 to May 16, 2010 being the date the tenancy was to have ended. The landlord submits that she was able to re-rent the premises near the end of April and she received \$200.00 in rent for April and \$550.00 rent for the period April 1-15, 2010. The landlord says that if the tenants were in occupancy she would have received \$2,600.00 for the period April 16 to May 16, 2010 however she only received \$750.00 leaving her with a rental loss of \$1,850.00 for the period. In addition to that loss the landlord says she is claiming \$82.00 for carpet cleaning costs. The landlord says that contrary to the provisions of the fixed term tenancy agreement the tenants did not clean the carpets when they vacated the rental unit.

The landlord says she received the tenants' forwarding address on April 12, 2010 and she filed her application for dispute resolution on April 22, 2010 well within the 15 day time limit for making such an application.

The tenants are applying for double the security deposit in the sum of \$4,000.00. The tenants feel that the landlord should not be granted an order allowing her to retain their security deposit because the landlord did not prepare Condition Inspection Reports at the beginning and the end of the tenancy.

Analysis

I will begin with the tenants' claim for double the security deposit in the sum of \$2,000.00. Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The landlord testified that she received the tenants' forwarding address on April 12, 2010. The tenants supplied no evidence to contradict the landlords'. I therefore find that the landlord received the forwarding address on April 12 and as she filed her application for dispute resolution on April 22 she filed within the time limits allowed under the Act. I therefore dismiss the tenants' claim for double the security deposit. As they have been unsuccessful in their application I also dismiss their claim for recovery of the filing fee paid for their application.

With respect to the landlord's claims, the evidence shows that the tenants entered into a fixed term tenancy ending May 16, 2010 but they vacated the rental unit on April 12, 2010 without paying rent for the last two month terms that being March 16 to April 15 and April 16 to May 16. The landlord had received a deposit of \$2,600.00 which she applied to the March 16 to April 15 period however the evidence shows that while the landlord did mitigate her damage by locating a new tenant she still suffered a loss of revenue for the period of \$1,850.00. I will therefore allow the landlord to recovery that sum. Using the offsetting provisions of the *Residential Tenancy Act*:

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I will allow the landlord to deduct \$1,850.00 from the security deposit she holds.

With respect to the landlord's claim for recovery of carpet cleaning costs, the tenants say they did have the carpets cleaned and the landlord did not prepare a move-out condition inspection report. I will accept the evidence of the tenants and dismiss this portion of the landlord's claim.

Having been partially successful in her claims I will allow the landlord recovery of her filing fee.

The landlord is directed to deduct \$1,900.00 from the security deposit and return \$100.00 to the tenants forthwith.

Conclusion

The tenants are provided with a formal copy of an order for the sum of \$100.00.

Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.