



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit, for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlord comply with the Act and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of a security deposit and if so, how much?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on February 1, 2009 and ended on May 31, 2010. Rent was \$1,850.00 per month. The Tenants paid a security deposit of \$925.00 and one half of that was returned to them by the Landlord at the end of the tenancy.

On April 25, 2010, the Landlord served the Tenants with a 2 Month Notice to End Tenancy for Landlords' Use of Property dated April 25, 2010. The ground indicated on the Notice was that the "rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse." The Landlord said the rental unit was owned by his parents and it was their intention to return to the community to live closer to their family. However, due to unforeseen circumstances with their business, the Landlord's parents did not return to reside in the rental unit following the end of the tenancy. Instead the property was sold within approximately 2 months of the end of the tenancy.

The Parties also agree that on June 2, 2010, they completed a move out condition inspection report and that the Tenants gave their written authorization for the Landlord to keep one-half of the security deposit (or \$462.50) to compensate him for some cleaning and repairs. The Tenants said they did not really agree to compensate the Landlord for those things but did not have the time and energy at the time to dispute it.

Analysis

Section 51(2) of the Act says that if a Landlord has not taken steps to accomplish the stated purpose (on the 2 Month Notice) within a reasonable period of time after the effective date of the Notice or used the rental unit for the stated purpose for at least 6

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months, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. In selling the rental property approximately 2 months after the tenancy ended, I find that the Landlord did not use the rental property for the purpose stated on the 2 Month Notice. As a result, I find that the Tenants are entitled to compensation in the amount of \$3,700.00.

However, I find that there are no grounds for ordering the Landlord to return the balance of the Tenants' security deposit. The Tenants gave the Landlord their written authorization to keep ½ the security deposit to compensate him for cleaning and repairs and cannot now seek to rescind that agreement because they feel the cleaning and repairs were not warranted. Consequently, this part of the Tenants' claim is dismissed without leave to reapply.

I find that the Tenants are entitled pursuant to s. 72 of the Act to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$3,750.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: October 28, 2010.

Dispute Resolution Officer