



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD & FF

Introduction

This dealt with an application by the tenants seeking the return of double their security and pet deposits. The tenants also seek compensation for money owed under the tenancy agreement.

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.

Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenants to a monetary Order for the return of double their security deposit?

Are the tenants' entitled to compensation related to an oral agreement for a move out bonus?

Background and Evidence

The parties entered into five tenancy agreements over the period of December 15, 2008 to July 31, 2010. The agreements were as follows:

1. December 15, 2008 to April 30, 2009 for the monthly rent of \$1,600.00 and a pet and security deposit of \$1,600.00 paid on December 15, 2009;
2. May 1, 2009 to October 31, 2009 for \$1,600.00 per month;
3. November 1, 2009 to April 30, 2010 for the monthly rent of \$1,600.00;
4. May 1, 2010 to June 30, 2010 for the monthly rent of \$1,200.00; and
5. On May 31, 2010 the parties entered into a final agreement beginning on July 1 to July 31, 2010 for the monthly rent of \$2,000.00.

In addition to the fifth tenancy agreement the parties also signed a mutual agreement to end the tenancy effective 12:05 p.m. on 31 July 2010. This mutual agreement to end the tenancy was signed on May 31, 2010 as well.

During this time the tenants were seeking new accommodation and signed the final fixed term agreement because they had not yet secured accommodation for the end of the June 2010. The following day, after signing the agreement, the tenants learned that they had secured new accommodation. They contacted the landlord to see if they could be released from the tenancy agreement. However, the landlord indicated that it was not possible and the tenants were required to fulfil the tenancy agreement they just signed.

The tenants gave the landlord notice to end tenancy, in breach of the fixed term lease they had just signed and vacated the rental unit effective June 30, 2010. At the end of the tenancy the parties had disagreement about the condition of the rental unit, specifically the condition of the carpets. Although the landlord requested that the tenants attend the rental unit to do the move out condition inspection, there was never a specified appointment made. It was the tenants' position that the landlord had no intent to return the security deposits and there was no point in meeting at the end of the tenancy.

The tenants submit that they returned the keys to the landlord on June 30, 2010 and provided their forwarding address at that time. The tenants also submit that their forwarding address was provided to the landlord in writing by e-mail in the June 2, 2010 notice to end tenancy.

The landlord submits that the tenants were not entitled to the return of the security and pet deposits because they breached the fixed term lease and owed the rent for July 2010 and the tenants caused damaged to the rental unit. The landlord did not dispute receiving the tenants' forwarding address.

Both the landlord and the tenant confirmed that written condition inspection reports were not completed.

The landlord and tenants both confirmed that the tenants' security deposits have not been returned. The landlord confirmed that he did not file an application for Dispute Resolution requesting to retain the tenants' security deposit.

Analysis

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

I grant the tenants' application for Dispute Resolution and Order that the landlord pay the tenants double their security and pet deposits pursuant to section 38(6) of the *Act*.

I accept the evidence of the tenants that they provided the landlord with their forwarding address and the landlord did not dispute receiving the forwarding address. I accept that the landlord did not file an application for Dispute Resolution requesting to retain the tenants' security deposit. I am also satisfied that the landlord did not complete written move in and move out condition inspection reports as required by the *Act*.

I accept that the landlord did make an attempt to schedule a move out condition inspection by phone; however, the landlord did not issue the final opportunity to conduct an inspection as required by section 36. I acknowledge the landlord's argument that they considered that the tenants had abandoned the rental unit; however, I do not agree with this position. I find that the landlord could not consider the rental unit as abandoned because the tenants had clearly stated they were ending the tenancy, had provided a forwarding address and had returned the keys. The landlord could have issued the final notice to conduct an inspection because the landlord had the tenants' forwarding address.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I do not accept the tenants' claim for their claim for money owed related to the oral agreement to receive a move out bonus. I accept that this was a personal agreement between the parties which was payable only if the tenants remained in the rental unit to the end of July 31, 2010. I accept that this sum was intended to benefit the landlord by ensuring that the rental unit was occupied until the purchasers took possession but it was also meant to compensate the tenants for occupying the rental unit until the ownership changed hands.

I find that this agreement was outside of the *Act* and cannot be enforced through dispute resolution. However, I find that even if I could consider the enforcement of this

oral agreement, I would not find in favour of the tenants because they failed to remain in the rental unit as agreed. This portion of the tenants' claim is dismissed.

I find that the tenants have established a total monetary claim for the sum of **\$3,251.11** comprised of double the pet and security deposit of \$1,600.00, accumulated interest of \$1.11 plus the recovery of the \$50.00 filing fee paid for this application.

Conclusion

I grant the tenants' application and have issued a monetary Order for the sum of **\$3,251.11**. This Order must be served upon the landlord. This Order may be filed with the Province of British Columbia Small Claims Court 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: December 22, 2010.

Dispute Resolution Officer