



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for the return of their security deposit, for a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. The parties were provided with the opportunity to submit documentary evidence prior to this hearing.

The Landlord submitted a package of evidence to the Residential Tenancy Branch but the evidence package was not served to the Tenants. As this evidence package was not served in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure, the documentary evidence was not accepted as evidence. The Agent for the Landlord was permitted to provide oral testimony regarding any of the evidence in the evidence package.

The Tenants submitted a package of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence package was mailed, by registered mail, to the service address provided to the Tenant by the Landlord on December 02, 2010. The Tenants cited a tracking number to corroborate this statement. The female Tenant stated that they checked the Canada Post website and determined that the mail was delivered on December 03, 2010. On the basis of this undisputed testimony, I find that the evidence package was properly served on the Landlord, although the Agent for the Landlord did not have a copy of that evidence. As this evidence package was served in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure, the documentary evidence was accepted as evidence.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the return of their security deposit; to compensation for being asked to move from the rental unit when the Landlord did not use the rental unit for the purpose stated in the Notice to End Tenancy; to compensation for the cost of moving; and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenants agree that the Landlord and the Tenants signed a written tenancy agreement, which indicates this tenancy began on November 25, 2007, that the Tenants were required to pay monthly rent of \$2,500.00 on the first day of each month; that the Tenants paid a security deposit of \$1,250.00 on November 25, 2007; and that the Tenants paid a pet damage deposit of \$1,250.00 on November 25, 2007.

The Agent for the Landlord and the Tenants agree that the Landlord served the Tenants with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*. The Agent for the Landlord stated that the Notice to End Tenancy that was served was manually amended to indicate that it was a three month notice. The female Tenant stated that she does not have a copy of that Notice with her but she does not believe it was manually amended to indicate that it was a three month notice.

The Agent for the Landlord and the Tenants agree that the aforementioned Notice to End Tenancy was personally served to the female Tenant on May 13, 2010. The Agent for the Landlord stated that she also posted the Notice to End Tenancy on the door of the rental unit on March 25, 2010, although the Tenants deny receiving this Notice.

The Agent for the Landlord and the Tenants agreed that on June 23, 2010 the Tenants provided the Agent for the Landlord with written notice, via email, that they intended to vacate the rental unit on July 05, 2010.

The Agent for the Landlord and the Tenants agree that the Tenants vacated the rental unit on July 07, 2010; that the Tenants did not authorize the Landlord to retain any portion of the security or pet damage deposit; that the Landlord returned \$1,249.61 of the deposits; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Landlord and the Tenants agree that the Tenants provided the Agent for the Landlord with their forwarding address, via email, on July 22, 2010.

The Agent for the Landlord and the Tenants agree that the Tenants were not required to pay rent for June of 2010, pursuant to section 51(1) of the *Act*.

The Agent for the Landlord stated that the Landlord intended to move into the rental unit when this Notice to End Tenancy; that her plans changed and she did not move into the rental unit; and that she rented the unit to other occupants on August 15, 2010.

The Tenants are claiming compensation for moving costs, in the amount of \$1,530.00, for costs associated to moving.

The Tenants are claiming compensation, in the amount of \$10.50, for a land title search fee, which they incurred in an attempt to find an address for the Landlord.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenants entered into a tenancy agreement that required them to pay monthly rent of \$2,500.00; that the Tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 on November 25, 2007; that the tenancy ended on July 07, 2010; that the Tenants provided their forwarding address, in writing, to the Agent for the Landlord on July 22, 2010; that the Landlord only returned \$1,249.61 of the two deposits; that the Tenants did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the full security and pet damage deposits or filed an Application for Dispute Resolution seeking to retain any portion of those deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double the security deposit and pet damage deposit that was paid, plus any interest due on the original amounts.

The undisputed evidence is that the Tenants were personally served with a Notice to End tenancy, served pursuant to section 49 of the *Act*, on May 13, 2010 and that the Notice declared that the Tenants must vacate the rental unit by July 01, 2010.

The undisputed evidence is that the Landlord did not move into the rental unit and that the rental unit was re-rented on August 15, 2010. Although the Landlord may have intended to move into the rental unit when she first served the Notice to End Tenancy the evidence shows that she did not.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. The *Act* does not negate this payment even when the Landlord has a legitimate reason for not using the unit for the purpose stated in the Notice to End Tenancy.

As I have found that the Landlord or a close family member of the Landlord has not moved into the rental unit and that it was occupied by other tenants after this tenancy ended, I find that the Landlord must pay the Tenant \$5,000.00, which is the equivalent of double the monthly rent.

Upon being advised that the Landlord would be required to pay the Tenants the equivalent of two month's rent, the Agent for the Landlord stated that the tenants who moved into the rental unit on August 15, 2010 are close relatives of the Landlord, although she does not know their names or their relationship with the Landlord. In the absence of additional information, I am unable to conclude that the occupants who moved into the rental unit meet the definition of "close family relative", as defined by section 49 of the *Act*.

The undisputed evidence is that the Tenants were provided with the equivalent of one month's free rent, pursuant to section 51(1) of the *Act*, which is \$2,500.00. In my view this payment represents compensation for the costs and inconvenience of being required to move. As the amount of compensation exceeds the moving costs being claimed by the Tenants, I find that the Tenants have been adequately compensated for moving. On this basis, I dismiss the Tenants' claim for compensation for moving costs.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. On this basis I award the Tenants compensation for the cost of filing this Application for Dispute Resolution but I dismiss their claim for compensation a land title search, as I find that this was an expense associated to participating in this proceeding.

Conclusion

I find that the Tenant has established a monetary claim of \$10,141.36, which is comprised of double the security deposit and pet damage deposit, which is \$5,000.00; \$41.36 in interest on the original amount of the two deposits, \$5,000.00 in compensation pursuant to section 51(2)(a) of the *Act*; and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution.

I find that this monetary award must be reduced by \$1,249.61, which is the amount of the security/pet damage deposit that has already been returned to the Tenant. Based on these calculations, I am issuing a monetary Order in the amount of \$8,891.75. In the event that the Landlord does not voluntarily comply with this Order, it 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 09, 2010.

Dispute Resolution Officer