



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, (FF)

Introduction

This matter dealt with an application by the Tenants for the return of a key deposit, a security deposit plus compensation equal to the amount of the security deposit due to the Landlord's alleged failure to return it within the time limits required under the Act as well as for compensation for damage or loss under the Act or tenancy agreement.

This matter was originally scheduled for hearing on November 9, 2010 however on that day an agent for the Landlord requested an adjournment and as a result, the Tenants' application was adjourned to today's date. At the beginning of the hearing, the Landlord said he had only returned from overseas a couple of days prior and he sought a further adjournment so that he could submit evidence. The Tenants objected to a further adjournment on the grounds that the Landlord had been served with their hearing package on or about June 25, 2010 and therefore had ample time to submit evidence. I find that the Landlord has had 5 months to submit evidence and as a result, his request for a further adjournment was not granted.

Issues(s) to be Decided

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

Background and Evidence

This one year fixed term tenancy started on February 1, 2009 and was renewed for a further one year term which was to expire on February 1, 2011, however M.W. moved out on April 1, 2010 and L.C. moved out on May 24, 2010. Rent was \$1,600.00 per month however it was reduced to \$800.00 for the month of May 2010. The Tenants paid a security deposit of \$800.00 and a key deposit of \$300.00 at the beginning of the tenancy.

The Tenant L.C. said she did a move out inspection with the Landlord on May 24, 2010 and the rental unit was "deemed clean and in excellent condition." The Tenant said she gave her (and M.W.'s) forwarding addresses to the Landlord together with the keys to the rental unit and he advised the Tenant that he would return her damage deposit and key deposit in full. The Tenant said the Landlord did not return any funds to her

but instead advised her 2 weeks later that he would not be returning any money because of alleged deficiencies.

The Landlord claimed that he completed a move in and a move out condition inspection report with the Tenants however, on May 24, 2010, the Tenant, L.C. would not sign it. The Landlord claimed that the Tenants left nail holes in the walls and scratches on some doors. The Landlord also claimed that the Tenants did not clean some appliances and the carpets. Consequently, the Landlord argued that he incurred expenses for cleaning and repairs. The Landlord also said that at the beginning of the tenancy, the Tenants were given 2 key fobs, 2 front door keys, 2 common area keys and 2 mail keys. The Landlord claimed that at the end of the tenancy, the Tenants did not return one mail box key and returned one broken common area key. The Landlord said it would cost approximately \$5.00 to replace each of the mail box key and the common area key.

The Tenants also sought to recover compensation equal to one month's rent as they claimed that the Landlord wanted them to end their tenancy early because he wanted to reside in the rental unit. Consequently, the Tenants argued that the Landlord should have given them a Two Month Notice to End Tenancy and the one month compensation that is payable under s. 50 of the Act. The Landlord claimed that the Tenants agreed to move. In particular, the Landlord said that after M.W. moved out at the beginning of April, L.C. advised him that she could not afford the rent on her own so he agreed to reduce her rent for May 2010 to \$800.00. The Landlord also claimed that L.C. advised him that she had found other accommodations and therefore she agreed to vacate by May 24, 2010.

The Tenants further sought to recover compensation for a digital cable box that they said they forgot to remove at the end of the tenancy. The Landlord claimed that the cable box was not in the rental unit when he took possession of it and said he had no idea where it was.

Analysis

Given that the Tenants did not give the Landlord their written consent to keep their key deposit and given also that the Landlord has not made an application for dispute resolution to make a claim against it, I Order the Landlord pursuant to s. 62(3) of the Act to return the Tenants' key deposit of \$300.00 immediately.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute



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resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlord received the Tenants' forwarding address(es) in writing on May 24, 2010 but did not return their security deposit and did not have the Tenants' written authorization to keep the security deposit. I also find that the Landlord did not make an application for dispute resolution to make a claim against the deposit. As a result, I find pursuant to s. 38(6) of the Act, that the Landlord must return double the amount of the security deposit (\$1,600.00) to the Tenants.

I find that there are no grounds, however, for awarding the Tenants compensation equal to one month's rent due to the Landlord's failure to give them a 2 Month Notice to End Tenancy. Although the Tenants argued that they were unaware of this provision of the Act when the Landlord approached them about moving, I find that this is not a relevant consideration under s. 50 of the Act. Furthermore, I find that one of the Tenants (M.W.) had already moved out by April 1, 2010 and I find that L.C. agreed to move out in consideration of receiving a rent reduction for May 2010. Consequently, this part of the Tenants' application is dismissed without leave to reapply.

Given the contradictory evidence of the Parties regarding the digital cable box, I find that there is insufficient evidence to conclude that the Landlord had it in his possession but failed to return it to the Tenants. Consequently, this part of the Tenants' claim is also dismissed without leave to reapply. I find pursuant to s. 72 of the Act that the Tenants are entitled to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$1,950.00** 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: December 07, 2010.

Dispute Resolution Officer