



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNR, FF, O

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an order permitting the landlord to retain the security deposit and to recover the filing fee from the tenant for the cost of this application.

Both landlords and the tenant attended the hearing; each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlords also provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenant. All information and testimony provided has been reviewed and is considered in this Decision.

At the outset of the hearing, the Landlord's Application for Dispute Resolution was amended to include an application for a monetary order for unpaid rent.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?
Are the landlords entitled to retain the security to satisfy the claim?

Background and Evidence

This fixed term tenancy began on August 15, 2009. A copy of the tenancy agreement was provided in advance of the hearing, and it states that the fixed term expired on September 1, 2010 and at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time. The parties agree that the tenancy did not continue for another fixed length of time. The tenancy agreement also states that rent is payable on the 15th day of each month.

The parties further agree that the rent amount was \$1,000.00 per month and the tenant actually paid on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$500.00 as well as a pet damage deposit in the amount of \$500.00. The tenancy ended on September 1, 2010, and the landlords have not returned either deposit to the tenant.

The landlords testified that the tenant gave written notice by way of email on August 16, 2010 stating that he that he would be vacating the rental unit at the end of the fixed

term, being September 1, 2010. The male landlord spoke to the tenant who told the landlord that he did not have the money to pay rent for the month of September. The landlord asked the tenant to sign a document agreeing that the landlords could keep the deposits, to which the tenant did not agree.

The landlords further testified that they immediately tried to re-rent the unit by advertising on Craig's List and refreshing the advertisement daily. The unit was shown to some perspective renters however the unit was not re-rented until October 1, 2010. The landlords claim one month's rent for inadequate notice from the tenant, stating that the tenant was obligated to give one month's notice by August 1, 2010.

The tenant testified that he contacted the landlords on August 15 or 16, 2010 stating that he could not afford to pay the rent, he left the rental unit at the end of the fixed term, and therefore he is not obligated to pay another month's rent.

He further testified that the reason the landlords were not able to re-rent the unit was because of the significant amount of noise and disruption caused by on-going construction in the area. He stated that it had nothing to do with the tenant. He added that jackhammers were running for about 10 days and the landlords had told him the construction would be about 6 weeks but went for significantly longer. The tenant was not able to use his balcony for at least 3 or 4 months. He further testified that the landlords had told him that the construction wouldn't affect him, when in fact the construction locker was right outside his unit. The rent was reduced by \$100.00 for one month due to the inconvenience that the construction caused the tenant.

Analysis

Firstly, I find that rent was not payable under the tenancy agreement on the 1st day of each month. The tenancy agreement clearly states that rent is payable on the 15th day of each month.

I also find that at the end of the fixed term, being September 1, 2010, the tenancy reverted to a month-to-month tenancy.

The *Residential Tenancy Act* provides that:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the circumstances, I find that the parties entered into a tenancy agreement stating that rent was payable on the 15th day of the month. Therefore, the tenant would be required under the *Act* to give the landlord notice to end the tenancy by the day before, being the 14th day of the month or sooner. Regardless of the date that the tenancy is based, the tenant is required to give the landlords one month's notice of his intention to vacate the rental unit.

I also find that the landlords have retained the pet damage deposit contrary to the *Act*:

38 (7) If a landlord is entitled to retain an amount under subsection (3) [*previously ordered by the director or remains unpaid by the tenant*], or (4) [*agreed to in writing by the tenant or ordered by the director*], a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise. (*emphasis and content in [] added*)

That section bars the landlords from retaining the pet damage deposit and bars the director from ordering that the landlords retain the pet damage deposit unless the landlords are able to prove that the pet caused damage to the rental unit. The consequences for the landlords for failing to return the pet damage deposit, or applying for dispute resolution claiming against it for pet damages is that the landlords, upon application by the tenant, would be required to pay the tenant double the amount of the pet damage deposit, pursuant to Section 38 (6) (b). The tenant has not made application for return of that pet damage deposit, and in the circumstances I find that the pet did not cause damage to the rental unit, and therefore the tenant is entitled to return of the pet damage deposit.

With respect to the evidence that the landlords were not able to re-rent the unit due to construction in the area, I agree that the *Act* requires the landlords to mitigate any loss, however, in the circumstances I cannot find that the landlords were able to mitigate in these circumstances. The tenant has not made an application for a rent reduction due to his loss of quiet enjoyment or for misguiding the tenant about the length of time that construction would be taking place or how it might affect this rental unit.

Therefore, my findings are that the tenant owes the landlords \$1,000.00 for unpaid rent for which the landlords are entitled to claim against the security deposit, and the landlords owe the tenant \$500.00 for return of the pet damage deposit. Further, Section 72 of the *Act* permits me to order that any amount due to the landlords may be deducted from any security deposit or pet damage deposit due to the tenant.

Conclusion

For the reasons set out above, I order that the amounts be set off from one another, and the landlords are entitled to retain the security deposit and pet damage deposit in full satisfaction of the claim. The landlords are also entitled to recovery of the \$50.00 filing fee for the cost of this application, and I hereby grant a monetary order in favour of the landlords in the amount of \$50.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement 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: January 14, 2011.

Residential Tenancy Branch