



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the tenants seeking compensation related to the loss of quiet enjoyment of the rental unit. The tenants also seek the return of their security deposit.

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

Did the landlord return the tenants' security deposit in accordance with section 38(1) of the *Act*?

Did the tenants experience a loss of quiet enjoyment of the rental unit during the period that the landlords completed renovations to the rental unit entitling the tenants to compensation?

Background and Evidence

This tenancy began on June 13, 2009 for the monthly rent of \$1,250.00 and a \$625.00 security deposit which the tenants paid on the commencement of the tenancy. The parties agreed to reduce the rent to \$1,200.00 effective May 1, 2010. The parties did not complete written move in and move out condition inspection reports of the rental unit.

The tenancy ended effective September 15, 2010 by mutual agreement of the parties. The parties completed a visual inspection of the rental unit on this day and the landlords indicated that the condition of the rental unit was good and that the tenants' would receive their full security deposit within 15 days. The tenants provided the landlords with their forwarding address in writing.

The landlords subsequently inspected the unit the next day and determined that the rental unit was not in good condition and required cleaning and carpet cleaning. The landlords did not contact the tenants to inspect the unit again and to discuss additional cleaning, but rather, the landlords completed the cleaning themselves and deducted it from the tenants' security deposit without their consent. The tenants received a cheque in the amount of \$378.20 out of their \$625.00 security deposit.

With respect to the loss of quiet enjoyment the tenants submitted that the landlords began renovating the rental unit starting August 5, 2010. The landlords were painting the exterior of the house and had all the windows covered with plastic. The tenants submitted that the interior of the rental unit became very hot and unpleasant and their children could not enjoy the yard due to the tools and later due to building material from when the landlords were working on the roof.

The tenants stated that the landlords worked continuously seven days a week often before 8:00 a.m. in the morning. The landlords would not listen to any of their concerns or make any adjustments to their renovation plans. For example, the tenants requested that the landlords delay repairing the roof until after the tenants children have returned to work.

Towards the end of August the dispute escalates to the point where the parties are fighting and the tenants call the police after the landlords drive their vehicle in a manner which makes the tenants uncomfortable. The police assist the parties in calming down and making some agreements to help keep the dispute from escalating again.

The landlords submitted that they only had a small window of time to complete the renovations so they proceeded. The situation did not allow for a lot of accommodation to the tenants; however, it was short lived. The landlords were in the process of selling the unit and the house required painting and a new roof. The landlord expressed regret that the tenants experienced discomfort; however, felt it could not be avoided. The landlords submitted that they compensated the tenants already by providing only requiring half a month's rent for the first and last month of the tenancy.

Analysis

Based on the evidence and testimony before me, and on the balance of probabilities, I find as follows:

I deny the tenants claim for compensation related to loss of quiet enjoyment. I am not persuaded that the circumstances resulted in a significant devaluation of the rent but

rather was an inconvenience related to the landlords' legal right and obligation to repair and maintain the rental unit.

I find that the tenants are entitled to the return of double their security deposit as the landlords breach the *Act*. The landlords had extinguished their right to the security deposit by failing to complete move in and move out condition inspection reports pursuant to sections 26 & 36 of the *Act* and then breached section 38(1) by failing to return all of the tenants deposit within fifteen days of the end of the tenancy.

Section 38(6) states that if a landlord does not comply with section 38(1) of the *Act* then the landlord **must** pay the tenant double the security deposit. I find that the landlords are required to pay the tenants the sum of \$1,250.00 less the sum of \$378.20 which has already been returned to the tenant.

I find that the tenants are entitled to a monetary Order in the amount of **\$871.80**. 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: February 22, 2011.

Residential Tenancy Branch