



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed an Application on November 9, 2010, requesting a monetary order to retain a portion of the security deposit, and to recover the filing fee for the Application.

The Tenants filed their Application requesting a monetary order for the return of double their security deposit, and to recover the filing fee for the Application.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to retain a portion of the security deposit?

Are the Tenants entitled to the return of double their security deposit?

Background and Evidence

The parties entered into a written tenancy agreement which began on April 12, 2010, and was to have a term until March 31, 2011. The Tenants paid the Landlord a security deposit of \$500.00 on April 10, 2010. There was a liquidated damages clause in the tenancy agreement in case the Tenants ended the tenancy prior to the end of the first term.

On October 3, 2010, the Tenants informed the Landlord they were terminating the tenancy agreement as of October 31, 2010. The Tenants attended the Landlord's residence and both parties signed a mutual agreement to end the tenancy on October 3, 2010. The evidence of both parties was that there was no discussion regarding liquidated damages payable or loss of rent. The Landlord testified that she was ill with a headache and she wanted to talk about the matters on another day.

At the end of the tenancy the Landlord wanted to retain a portion of the security deposit for painting a portion of the unit, in the amount of \$175.00. I note there was somewhat contradictory evidence regarding this amount being attributable to painting or to the liquidated damages clause. Regardless, the Tenants did not agree to this deduction.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenants are entitled to the return of the security deposit, however, they are not entitled to return of double the security deposit. The Landlord filed the application against the security deposit within the required 15 days of the end of the tenancy, and therefore, there is no doubling of the deposit pursuant to section 38 of the Act.

I find the Landlord is not able to keep a portion of the security deposit. I find that the Landlord had insufficient evidence with regard to the painting of the unit. I also note that the Landlord simply agreed to end the tenancy with the Tenants and did not provide the Tenants notice of her intent to sue for damages for breach of the term agreement, as set out in section 3 of the policy guideline. Therefore, I order the Landlord to pay the Tenants the sum of **\$500.00** for the return of their security deposit. I grant and issue a monetary order in favour of the Tenants. This order may be enforced in the Provincial Court of British Columbia.

I decline to award either party with their filing fee for the Application, as both parties have failed to completely prove their case.

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: March 16, 2011.

Residential Tenancy Branch