



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application filed by the tenant for return of the security deposit and to recover the filing fee from the landlords for the cost of this application. The tenant company was represented by an agent, and the landlords both attended the conference call hearing. The tenant's agent and one of the landlords gave affirmed testimony and the parties were given an opportunity to cross examine each other on their evidence. All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to recovery of the security deposit, or double the amount of the security deposit?

Background and Evidence

The parties agree that a tenancy agreement was entered into by the parties which commenced on September 15, 2010 and expired on April 14, 2011. A copy of the tenancy agreement and a one-page addendum were provided in advance of the hearing. The agreement also provided for rent in the amount of \$1,700.00 per month payable in advance on the 15th day of each month, and there are no rental arrears. On July 17, 2010 the landlords collected a security deposit from the tenant in the amount of \$850.00. The rental unit is a furnished condominium-type apartment.

The tenant's agent testified that after the end of the tenancy a forwarding address was provided to the landlords by way of email on May 10, 2011, and the landlords responded to that email by way of a return email the same day. Copies of those emails were provided prior to the hearing. The tenant received a partial refund of the security deposit in the amount of \$538.06 on or about May 15, 2011. The landlords' email had stated that because the unit was not left in the same condition as when the tenant moved in, certain deductions were taken from the security deposit, being \$200.00 for cleaning and \$111.94 for cleaning the carpets. The tenant's agent denies that a stain in

the bedroom carpet or any other claims made by the landlords in their May 10, 2011 email is anything beyond normal wear and tear, and the stain in the carpet was there before the tenant moved in. No move-in or move-out condition inspections were completed. The tenant claims double the amount of the security deposit that was not refunded by the landlords.

The tenant's agent further testified that the unit was occupied as residential accommodation and that the tenant resides in Alberta but was looking into some business on Vancouver Island that required the tenant to be in Victoria from time-to-time. The advertisement that listed the apartment for rent was accessed on Craig's List.

The landlord testified that the rental unit was advertised for rent as a vacation rental on Vacation Rental by Owner (VRBO) as well as on Craig's List, which referred the reader to VRBO. Further, rentals on that website often charge a cleaning fee which the parties had orally agreed at the outset of the tenancy would not be collected by the landlords. The landlord also testified that the unit is rented as a vacation rental; it is their home and they went on vacation. The landlords left linens, decorations, books, furnishings and kitchen gear. The phone was not disconnected and the tenant used the landlord's phone number. Also, all photographs on the website state: "Vacation condo with mountain views." Therefore, the landlords feel that the *Residential Tenancy Act* does not apply.

The landlord further testified that a stain was left on the bedroom carpet and provided a copy of a receipt in the amount of \$111.94 for cleaning the carpets. If the tenant did not cause the stain, the tenant had an obligation to notify the landlords, which was not done at the outset of the tenancy. The landlord also testified that all the towels and linens were left in a pile and it was not known to the landlords upon their return if those items were clean or not. The bed was not made, the dishwasher contained dirty dishes, the sink in the kitchen required cleaning and the dryer was full of wrinkled linens. The landlord spent 5 hours cleaning the unit and ironing linens.

The landlord also testified that the Tenancy Agreement that was used is the one on the Residential Tenancy Branch website and that it was used because of its convenience and the landlords felt it was a good form.

Analysis

I have reviewed the tenancy agreement, and I find that the *Residential Tenancy Act* does apply in this situation. The *Residential Tenancy Act* states that the *Act* does not apply to: "living accommodation occupied as vacation or travel accommodation." Although there is no dispute to the testimony that the photographs in the advertisement

state “vacation condo,” I find that the written contract entered into by the parties is a contract under the *Residential Tenancy Act*. Further, paragraph 1 on page 2 of the form states: “The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard terms. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.”

Paragraph 4 of the tenancy agreement, with respect to the security deposit, specifically states as follows:

- 1) The landlord agrees
 - (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
 - (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
 - (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
 - ii) the landlord applies for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.
- 2) The 15 day period starts on the later of
 - (a) the date the tenancy ends, or
 - (b) the date the landlord receives the tenant’s forwarding address in writing.
- 3) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.
- 4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

Although the landlords may have intended the rental unit to be used as a vacation rental, the agreement itself, signed by the parties, show that the parties agreed that the *Residential Tenancy Act* applies.

I further find that the tenancy ended on April 14, 2011, the tenant provided a forwarding address in writing by email on May 10, 2011 and the landlords received it that day and responded to it that day. The *Act* states that 15 day period for return of the security

deposit from the date the landlord receives the forwarding address. I further find that the landlords have not applied for dispute resolution claiming against the security deposit. The landlords returned a portion, which the tenant received on or about May 15, 2011, leaving \$311.94 owing to the tenant. I find that the landlords responded with a cheque payable to the tenant within the 15 days, and therefore, the tenant is entitled to double recovery of the portion not refunded, or \$623.88. The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$673.88. 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: September 26, 2011.

Residential Tenancy Branch