



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of this application.

The landlord and both tenants attended the conference call hearing, provided oral testimony and were given the opportunity to cross examine each other on their evidence. The tenants also provided evidence in advance of the hearing to the Residential Tenancy Branch and to the landlord. All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agree that this fixed term tenancy began on February 1, 2009 and expired on February 1, 2010, and then reverted to a month-to-month tenancy. Rent in the amount of \$1,000.00 per month was originally payable in advance on the 1st day of each month, however the monthly rent was raised to \$1,030.00 effective February 1, 2010 and then again to \$1,060.00 effective February 1, 2011. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$400.00.

The tenants testified that they paid rent for the month of May, 2011 but not for June. The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property on April 19, 2011, a copy of which was provided in advance of the hearing. The notice is dated April 17, 2011 and contains an effective date of vacancy of June 30, 2011. The tenants testified that they moved from the rental unit on June 1, 2011, but were not provided with compensation as required under the *Residential*

Tenancy Act. The notice also states that: "All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The tenants also claim that the landlord increased the rent in February, 2011 by 3% and the allowable increase under the regulations is 2.3%. The tenants paid \$1,060.00 for each of February, March, April and May when they should only have been required to pay \$1,053.69 for each of those months, for a difference of \$6.31 per month, or \$25.24.

The tenants also testified that the landlord was given written notice of their intention to vacate the rental unit prior to the effective date of the landlord's notice, and that notice was given to the landlord personally on May 17, 2011. A copy of the letter was provided in advance of the hearing. Also provided are copies of emails between the tenants and the landlord, and specifically an email dated May 18, 2011 from the tenants to the landlord confirming that the tenants gave the landlord written notice to vacate the rental unit on June 1, 2011 and a response to that email from the landlord dated May 19, 2011.

The tenants claim \$1,053.69 which represents one month of the correctly calculated rent payable on the rent increase imposed effective February 1, 2011, in addition to the overpayments of rent paid from February to May, 2011 inclusive.

The landlord testified that the tenants did not return the keys to the rental unit for months. The landlord met with the tenants on the street and was yelled at and swore at by the tenants.

The landlord also testified that the tenant's notice was not received, although the landlord received emails from the tenants perhaps at the end of May, 2011 which spoke to ending the tenancy early.

The landlord also stated that the tenants did not provide the landlord with sufficient notice to vacate the rental unit on June 1, 2011 and therefore are not entitled to any refund of rent paid.

Analysis

The allowable rent increase for 2011 is 2.3%, and I find that a 2.3% increase on rent in the amount of \$1,030.00 is \$23.69, which would have increased the rent to \$1,053.69 per month. The tenants paid rent in the amount of \$1,060.00 for each of February,

March, April, and May, 2011, and are therefore entitled to recovery of the overpayments in the amount of \$6.31 per month, or \$25.24 in total.

The *Residential Tenancy Act* provides that a landlord may end a tenancy for the reason set out in the 2 Month Notice to End Tenancy for Landlord's Use of Property that was given to the tenants.

The *Act* further states as follows:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The *Act* also states that a tenant who receives a notice to end a tenancy for the landlord's use of the property may end the tenancy early by giving the landlord at least 10 days' written notice. If the tenant has already paid the rent for the month, the landlord must refund the proportion of rent that was not utilized by the tenant. If rent has not already been paid, the tenant must pay the landlord the proportion of rent due to the effective date of the tenant's notice. In either case, the tenant is entitled to compensation, pursuant to Section 51 of the *Act*, equivalent to one month's rent.

In this case, I find that the landlord received 10 days' notice from the tenants, which states the intention of the tenants to move from the rental unit on June 1, 2011, although the parties do not agree on the date. The landlord testified that it was received around the end of May, however, the tenants provided a copy of an email dated May 19, 2011 from the landlord which clearly acknowledges knowing the intention of the tenants to move on June 1 and to conduct a move-out condition inspection report on that date. Therefore, I find that the landlord had the notice by May 19, 2011, and the tenants are obligated to pay one day of rent for the month of June, 2011 in the amount of \$35.12.

I also find that pursuant to Section 51 of the *Act*, the tenants are entitled to one month's compensation from the landlords in the amount of \$1,053.69.

In summary, I find that the tenants are entitled to one month's compensation in the amount of \$1,053.69, in addition to rental overpayments of \$25.24, less one day of rent in the amount of \$35.12, for a total of \$1,043.81.

The tenants are 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 tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,093.81. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: October 17, 2011.

Residential Tenancy Branch