



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants applied requesting compensation for damage or loss under the act, return of double the deposit paid and to recover the filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Jurisdiction Analysis

At the start of the hearing I reviewed the copy of the fixed-term tenancy agreement submitted as evidence; the tenancy commenced on October 15, 2010, rent was \$1,665.00 per month, due on the first day of each month. The tenancy was to end on October 15, 2011, at which point it would convert to a month-to-month agreement. A deposit in the sum of \$750.00 was paid. Condition inspection reports were not completed.

On April 1, 2011, the landlord, who owns the rental unit, moved in with the tenants. From this point on the landlord and tenants shared kitchen and bathroom facilities.

As provided by section 4(c) of the Act; as the owner and tenants shared bathroom and kitchen facilities, effective April 1, 2011; I find the fixed-term tenancy agreement was

terminated and the tenancy ended. From April 1, 2011, onward, the living arrangement did not meet the jurisdictional requirement of the Act.

Preliminary Matters

The landlord submitted a claim requesting compensation in the sum of \$4,550.28; however, a detailed calculation of the claim was not supplied to the tenants or the Residential Tenancy Branch. The claim made requested compensation for unpaid rent, damage to the unit, damage or loss and retention of the deposit.

During the hearing I determined that the landlord's application would not proceed, based upon section 59(5)(a) of the Act which provides the authority decline an application when it does not comply with 59(2)(b) of the Act, by disclosing the full particulars of the claim.

The landlord did not provide a detailed calculation for any portion of her claim, as required. I was unable to determine what portions of her claim related to a request for compensation and what amount of compensation she sought for each item listed. If I were to dismiss the application it is unclear as to what I would be dismissing; therefore, the application has been declined and the landlord has leave to reapply.

Tenant's Claim

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord did claim against the deposit within 15 days of the end of the tenancy, requesting compensation for unpaid rent. This claim has not been proven; however, a claim was submitted as required by section 38(1) of the Act.

Therefore, I find that the tenant's are entitled to return of their deposit in the sum of \$750.00.

The balance of the tenant's claim related to compensation for costs incurred during the period of time that jurisdiction has been declined.

As the tenant's application has merit I find they are entitled to filing fee costs.

Conclusion

I declined to hear the landlord's claim; she has leave to reapply.

The tenants are entitled to return of the \$750.00 deposit plus filing fee costs in the sum of \$50.00.

Based on these determinations I grant the tenants a monetary Order in the sum of \$800.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This tenancy commenced on October 15, 2010 and ended on March 31, 2011. From April 1, 2011, onward, the living arrangement was not within the jurisdiction of the Act.

The balance of the tenant's claim does not fall within the jurisdiction of the Act.

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: November 15, 2011.

Residential Tenancy Branch