



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC, MNSD, FF
 Tenants: MMSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied for the return of a security deposit and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Are the Tenants entitled to the return of a security deposit?

Background and Evidence

On February 20, 2011, the Parties entered into a fixed term tenancy agreement. The agreement stated that it was for one year commencing on March 1, 2011 and ending on March 31, 2012. The agreement also contained a term that "at the end of the fixed term, the tenancy ends and the tenant must move out of the rental unit." The tenancy ended on February 29, 2012 when the Tenants moved out. Rent was \$1,800.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$900.00 at the beginning of the tenancy.

The Parties agree that on or about February 3, 2012, the Landlord contacted the Tenants to determine if they wanted to enter into another fixed term tenancy agreement. The Landlord said the Tenants were initially interested in staying but wanted to enter into a month-to-month tenancy which was not what he wanted. On February 7, 2012, the Tenants advised the Landlord in writing that they would be moving out on February 29, 2012. The Landlord argues that the fixed term did not end until March 31, 2012 as stipulated in the tenancy agreement. The Tenants argue that the tenancy ended after one year (or on February 29, 2012) as stipulated in the tenancy agreement.

The Landlord claimed that he discussed the end date of the tenancy with the Tenants prior to them signing the tenancy agreement so they were well aware it was supposed to end on March 31, 2012. The Landlord argued that the fact the Tenants did not contact him first about their intentions in early February 2012 shows that they knew the tenancy was not supposed to end until March 31, 2012. The Tenants admitted that they wanted to stay but only on a month-to-month basis. The Tenants said the Landlord asked for a year of post-dated rent cheques at the beginning of the tenancy and they gave him 12. The Tenants argued that the fact that the Landlord did not ask for more cheques shows that it was both Parties' belief the tenancy was only supposed to be 12 months in length. The Tenants also claim that the Landlord's act of sending them a cheque for their security deposit showed that the Landlord knew the tenancy was supposed to end after 12 months. The Landlord said he only sent a cheque because he wanted to avoid a confrontation with the Tenants but changed his mind and immediately put a stop payment on that cheque.

The Landlord said he posted an advertisement for the rental unit in an online publication on or about February 8, 2012 but was unable to get a new tenant until March 15, 2012. The Landlord provided as evidence of this ½ of page 2 of the Residential Tenancy Branch standard form tenancy agreement. The Tenants said the Landlord advised them on February 15, 2012 that he had re-rented the rental unit for March and said nothing more. The Tenants also argued that the Landlord advertised the rental unit for \$100.00 more than they were paying.

Analysis

Section 28 of the Interpretation Act of B.C. defines a year as "12 consecutive months."

The *contra preferendum* rule of contract interpretation at common law holds that an ambiguous term in a contract will be construed against the party that included it in the contract.

Section 13 of the Act places the onus on a Landlord to prepare a written tenancy agreement that includes (among other things) the date the tenancy ends if it is a fixed term tenancy. Consequently, the Landlord has the burden of proof and must show on a balance of probabilities that it was the Parties' intention to end the tenancy on March 31, 2012 as he claims. However, given the contradictory evidence of the Parties on this issue, I find that the Landlord has not satisfied the onus of proof.

Furthermore, I find that the conflicting term of the tenancy agreement regarding when the tenancy ends must be interpreted having regard to rules of interpretation set out under statute and common law (set out above) with the result that I find the tenancy ended after one year or on February 29, 2012. Consequently, I find that the Landlord is not entitled to recover a loss of rental income for March 2012.

Section 38(1) of the Act says that a Landlord has 15 days from the end of the tenancy or the date the Tenants provide their forwarding address in writing (whichever is later) to return the Tenants' security deposit. I find that the tenancy ended on February 29, 2012 and that the Tenants gave the Landlord their forwarding address in writing on the move out condition inspection report the same day. Consequently, I find that the Tenants are entitled to recover their security deposit of \$900.00. As the Tenants have been successful on their application, I also find that they are entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee they paid for this proceeding.

Conclusion

The Landlord's application is dismissed without leave to reapply. A Monetary Order in the amount of **\$950.00** has been issued to the Tenant(s) and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 22, 2012.

Dispute Resolution Officer