



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income and to recover the filing fee for this proceeding. 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 April 5, 2012 the Tenants paid a security deposit of \$675.00 to the Landlord (who is an agent for the owner). The tenancy was supposed to start on May 1, 2012, however the Tenants claim that one of them, V.D.C., suffered a head injury at work which interfered with their ability to move. On April 27, 2012, the Tenant, M.B., met with the Landlord and advised her that they would not be able to move in. The Landlord's agent said the Landlord asked M.B. to think about it further and confirm with her later if that was what she wanted to do. The Tenants claim that the Landlord told them on April 27, 2012 that she was unsure if she could refund their deposit or not and would let them know and then her spouse (and agent in this matter) later contacted them and asked for their notice in writing.

The Tenants said they went to the Landlord's home on April 27, 2012 and left a notarized letter (which also contained their forwarding address in writing) with an adult person who apparently resided there. The Tenants said the person who took the letter said they would give it the Landlord when she returned home later that day. The Landlord's agent denied that the Landlord received this letter. The Tenants also sent a copy of this letter to the Landlord by mail on May 7, 2012 and the Landlord's agent claimed he received it on May 9, 2012.

The Landlord's agent said that as soon as he got the Tenants' notice on May 9, 2012 he began advertising the rental unit in an online website and had some showings but no one was interested in renting it for May 2012. Consequently, the Landlord's agent said

the Landlord suffered a loss of rental income for May 2012. The Landlord's agent also sought to recover a \$300.00 agent's fee. The Parties agree that the Tenants did not give the Landlord written authorization to keep the security deposit and that it has not been returned to them.

Analysis

Section 45(1) of the Act says that a Tenant of a month-to-month tenancy must give a Landlord one full, calendar month's notice in writing. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he or she incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that at the Landlord received the Tenants' notice to end the tenancy on May 9, 2012. Consequently, the earliest the Tenants could have ended the tenancy would have been June 30, 2012. However, a Landlord has a duty to try to re-rent the rental unit as soon as possible. Although the Landlord provided a witness statement of a neighbour who claimed the rental property was vacant in May, 2012, the Landlord provided no corroborating evidence that she tried to re-rent the rental unit for May as she claimed. In particular, the Landlord provided no documentary evidence of the online advertisements or any other evidence of the showings that were allegedly done in May. In the absence of such evidence, I find that there is insufficient evidence that the Landlord took reasonable steps to re-rent the rental unit for May 2012 and for that reason her application for a loss of rental income is dismissed without leave to reapply. I also find that there is no authority under the Act to award the Landlord fees for acting as an agent for the owner and that part of her application is dismissed without leave to reapply.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Although the Tenants never occupied the rental unit, I find that the tenancy ended when the Landlord received the Tenants' written notice that they would not be moving in on May 9, 2012. I also find that the Landlord received the Tenants' forwarding address in writing in the same letter. I find that the Landlords did not return the Tenants' security deposit and did not have the Tenants' written authorization to keep the security deposit. The Landlord made an application for dispute resolution on July 13, 2012 to make a claim for a loss of rental income however it did not include a claim to keep the Tenants'

security deposit (and it would have been outside the 15 day time limit under s. 38(1) to do so in any event). As a result, I find that the Landlord breached s. 38(1) of the Act. As a further result, I find pursuant to s. 38(6) of the Act that the Landlord must return double the amount of the security deposit or \$1,350.00 to the Tenants.

RTB Policy Guideline #17 at p. 2 states that “unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit.” Although the Tenants applied to recover only the original amount of the security deposit, I find that they did not specifically waive reliance on s. 38(6) of the Act. ***I Order pursuant to s. 38(4), 62(3) and s. 72(2) of the Act that the Parties’ respective monetary awards be offset with the result that the Tenants will receive a Monetary Order for the balance owing of \$1,008.06.***

As the Parties’ respective claims to recover their filing fees for this proceeding would be offsetting in any event, they are dismissed without leave to reapply.

Conclusion

The Landlord’s application is dismissed without leave to reapply. A Monetary Order in the amount of \$1,008.06 has been issued to the Tenants 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: July 30, 2012.

Residential Tenancy Branch