



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 15, 2012. The agreement provides that monthly rent of \$2,650.00 is due and payable in advance on the first day of each month. In addition to a security deposit of \$1,325.00 and a pet damage deposit of \$1,325.00, a rent cheque in the amount of \$1,325.00 for the period of May 15 to 31, 2012 were collected. There is no dispute that it was not until May 16, 2012 when keys to the unit were made available to the tenants. A move-in condition inspection report was completed and includes signatures of both parties by date of May 16, 2012.

Arising from a range of concerns on the part of the tenants about the condition of the unit and the yard, by e-mail dated May 18, 2012 the tenants confirmed with the landlord that they "would like to get out of the tenancy," and noted in the e-mail that the landlord appeared to "want the same thing." Thereafter, the parties formally agreed to end the tenancy effective May 18, 2012 by way of their signatures on a "Mutual Agreement to End a Tenancy" form dated May 22, 2012. The tenants' security and pet damage deposits were returned, however, the parties were unable to agree on the disposition of rent which, as noted above, had been paid for the period from May 15 to 31, 2012; in summary, the tenants want the half month's rent returned to them, whereas the landlord considers that it is properly retained. While the unit was promptly advertised for rent

following the end of this tenancy, it was not until July 15, 2012 when new renters took possession of the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 16 of the Act speaks to **Start of rights and obligations under tenancy agreement**, and provides as follows:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 44 of the Act addresses **How a tenancy ends**, and provides in part:

44(1) A tenancy ends only if one or more of the following applies:

(c) the landlord and tenant agree in writing to end the tenancy;

Further to the above, the “Mutual Agreement to End a Tenancy” form (RTB-08) includes the following text:

The parties recognize that the tenancy agreement between them will legally terminate and come to an end at this time. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: *“The landlord and tenant agree in writing to end the tenancy.”*

Based on the documentary evidence and the affirmed testimony of the parties, I find that the tenants did not gain possession of the unit until May 16, 2012 at which time the unit keys were made available to them. I also find that the tenancy ended on May 18, 2012 by way of the “Mutual Agreement to End a Tenancy” form which bears the signatures of both parties. In summary, I find that the tenants are liable for rent limited to the 3 day period of tenancy which I find is May 16, 17 & 18, 2012.

Following from all of the above, I find that the tenants have established entitlement to a claim of \$1,118.56, which is calculated as follows:

$\$2,650.00$ (monthly rent) \div 31 (# days in May) = $\$85.48$ (daily rent)

$\$85.48$ (daily rent) \times 3 (# days of tenancy) = $\$256.44$ (rent due to landlord)

$\$1,325.00$ (rent paid) - $\$256.44$ (rent due to landlord) = $\$1,068.56$ (rent balance
owed to tenants)

$\$1,068.56$ (rent balance owed to tenants) + $\$50.00$ (filing fee) = $\$1,118.56$

I order that the landlord repay the tenants $\$1,118.56$ from the rent payment of $\$1,325.00$ originally made by them, and that the landlord retain the balance of $\$206.44$ ($\$1,325.00$ - $\$1,118.56$).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$\$1,118.56$** . Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court 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: August 08, 2012.

Residential Tenancy Branch