



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF O

Introduction

This hearing dealt with applications by the tenants and by the landlord. The tenants applied for recovery of their security deposit. The landlord applied for a monetary order. Two tenants and the landlord participated in the conference call hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to recovery of the security deposit?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenants first rented the unit beginning in June 2010. Rent in the amount of \$1650 was payable in advance on the first day of each month.

On June 15, 2010, the landlord received a security deposit from the tenants in the amount of \$825. The landlord and the tenants carried out a move-in inspection and signed a condition inspection report on July 1, 2010.

On December 30, 2011, the landlord and one of the two tenants, DB, signed a new tenancy agreement to extend the tenancy. In this tenancy agreement, two boxes are ticked off indicating the length of the tenancy: (b) for a fixed term of one year ending January 1, 2013; and (c) other periodic tenancy: minimum 6 month lease. Under option (b) neither box is checked to indicate whether (i) the tenancy would revert to a month-to-month or (ii) the tenancy would end. However, the landlord and the landlord both initialled beside option (ii).

On August 8, 2012, the tenants sent the landlord an email to confirm in writing that the tenants would be vacating the rental unit as of September 30, 2012. The tenants vacated the rental unit on or about October 1, 2012. The landlord attempted to cash the tenants' post-dated rent cheque for October 2012, but it was returned for insufficient funds. The tenants closed their BC Hydro account on October 1, 2012.

On October 28, 2012, the landlord and one tenant, DB, carried out a move-out inspection. On that date, DB signed the condition inspection report agreeing that the landlord could retain the security deposit of \$825 to cover the costs of cleaning and repairs to the rental unit for which the tenant was responsible.

Tenants' Claim

In the hearing, the tenant DB stated that he felt that he had no choice but to sign off on the security deposit, even though he did not agree that the oven was damaged. Further, the tenants had offered to do the carpet cleaning themselves. The tenants believed that the landlord took advantage of them.

The landlord replied that the move-out inspection was not stressful, and if the tenant did not agree with the cleaning and repairs, he could have indicated that on the condition inspection report. Instead, the tenant signed off on the security deposit.

Landlord's Claim

The landlord claimed lost revenue of \$4950, representing the months of October, November and December 2012, on the basis that the tenants signed a fixed term lease to end on January 1, 2013 and the landlord was unable to re-rent the unit for the last three months of the fixed term. The landlord stated that the tenants knew that the lease was for a fixed term ending January 1, 2013, and that the notation regarding "minimum 6 month lease" was in reference to an agreement that after January 1, 2013, the tenants would agree to a further lease of at least 6 months. The landlord also claimed \$7 for the NSF charge for the October 2012 rent cheque and a BC Hydro bill for \$31.14, for October 2, 2012 to November 21, 2012.

The tenants' response to the landlord's claim was that their understanding of the tenancy agreement was that they were entering into a fixed term of at least six months beginning January 1, 2012, and that the tenancy would revert to a month-to-month tenancy six months later. Therefore, the tenants gave the landlord more than sufficient notice that they would be vacating the rental unit, and the landlord is not entitled to any portion of their claim.

Analysis

Tenants' Claim

I find that the tenants are not entitled to recovery of their security deposit, as the tenant DB clearly signed agreeing to allow the landlord to retain the security deposit for cleaning and repair costs, and the tenants did not provide evidence to establish that DB signed the document under duress.

Landlord's Claim

I find that the landlord is not entitled to their claim, as the section of the tenancy agreement indicating duration of the tenancy is unclear and there was no meeting of the minds in regard to the length of the fixed term. I explained to the landlord and the tenants in the hearing that parties to a contract cannot make an agreement to a future agreement, such as agree to a future fixed term of at least six months following the current lease. I find, based on the written lease agreement and the testimony, that the fixed term began on January 1, 2012 and the tenancy reverted to a month-to-month tenancy on July 2, 2012. The landlord clearly received the tenants' notice on August 8, 2012 that they would be vacating the rental unit by September 30, 2012. The tenants therefore fulfilled the requirement to give one month's notice to vacate. The landlord was not entitled to attempt to cash the tenants' post-dated cheque for October 2012 rent, and the tenants are not responsible for hydro costs incurred after the tenancy ended.

As neither application was successful, neither the landlord nor the tenants are entitled to recovery of their filing fee for the cost of their applications.

Conclusion

The application of the tenants and the application of the landlord are dismissed.

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: February 14, 2013

Residential Tenancy Branch

