



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with applications filed by both the tenants and the landlords pursuant to the *Residential Tenancy Act*.

The tenants seek:

1. Recovery of the security deposit.

The landlords seek:

1. A monetary order pursuant to Section 67;
2. An Order to retain the security and/or pet deposit pursuant to Section 38; and
3. An Order to recover the filing fee pursuant to Section 72.

Both parties appeared at the hearing of this matter. I therefore accept that both parties have had notice of this hearing and of each others' claims.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Background and Findings

The parties agree that this tenancy began on November 1, 2012 and ended on December 1, 2012. Rent was due and payable on the first of the month and the tenants paid a security deposit of \$675.00 and a pet deposit of \$100.00 at the start of the tenancy.

The tenant testified that they would not have moved except that his circumstances changed such that his son was going to be moving from Ontario to come to live with him. The tenant testified that they prepared a written notice on November 8, 2012 to advise the landlords of their intention to end the tenancy December 1, 2012. The tenant says he placed that Notice in the landlord's mailbox on that date. The tenant testified that he heard nothing from the landlords about the notice so he checked the mailbox and found that it was still there. He then delivered the Notice by hand to the landlords on November 11, 2012.

The parties agree that the landlords returned the \$100.00 pet deposit but not the security deposit. After the tenant vacated he contacted the landlord via telephone in mid-December to inquire as to the security deposit at which time he provided his forwarding address.

The landlords say that they did not receive the tenants' notice to end the tenancy until November 11, 2012. The landlords say they advised the tenant that they would try to secure a new tenant for December or they would seek to retain the deposit. In mid-December the landlord says the tenant called them seeking the deposit and he provided his forwarding address. The landlords submit that they had not secured a new tenant for December and are therefore seeking recovery of rent for December 2012 which was not paid. The landlords are also seeking to retain the security deposit in partial satisfaction of this claim and recovery of the filing fee paid for this application.

Analysis

The *Residential Tenancy Act* sets out how and when a notice to end a tenancy is to be given by a tenant to a landlord, it states:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Given the provisions of Section 45, the evidence in this case shows that if I accept that the tenant gave his notice on November 8, 2013 the earliest date this tenancy could

have ended would be December 31, 2012. However, the evidence shows that tenants did vacate the rental unit and did not pay rent for December. I therefore find that the landlord is entitled to rent in lieu of notice for December 2012 in the sum of \$1,350.00.

Security Deposit

Having made a monetary award in favour of the landlords I will allow them to retain the security deposit in partial satisfaction of that award. The tenants' claim to recover the security deposit is therefore dismissed.

Filing Fees

I find that the landlord is entitled to recover the filing fees paid for this application.

Calculation of total Monetary Award

Rent in lieu of Notice	\$1,350.00
Filing Fees for the cost of this application	50.00
Less Security Deposit	-675.00
Less Security Deposit interest from date paid to the date of this Order	0.00
Total Monetary Award in Favour of Landlords	\$725.00

Conclusion

The landlords are provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

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: March 13, 2013

Residential Tenancy Branch

