



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlords, for compensation under section 51 of the Act pursuant to section 49 and a Notice to End Tenancy for the Landlords' use of the rental unit issued to the Tenants and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has there been a breach of section 38 of the Act by the Landlords?
Are the Tenants entitled to compensation under section 51 of the Act?

Background and Evidence

This tenancy began on September 1, 2010, with the parties entering into the standard form tenancy agreement. The monthly rent was \$2,500.00, and the Tenants paid the Landlords a security deposit of \$1,250.00 on or about August 21, 2010.

The Tenants vacated the premises on or about April 29, 2011. The Tenants provided the Landlords with a written notice of the forwarding address to return the security

deposit to, by writing it into the outgoing condition inspection report. The outgoing report was completed on April 30, 2011.

The Landlords felt the Tenants owed them \$200.00 for alleged damages to the rental unit. The Tenants did not agree that a portion of the security deposit could be kept by the Landlords. However, the Landlords deducted \$200.00 from the security deposit and returned to them \$1,050.00, on or about May 24, 2011.

During the hearing the Landlords testified they thought they had 30 days to return the deposit to the Tenants.

The Tenants were vacating the rental unit due to a two month Notice to End Tenancy issued to them by the Landlords, dated February 28, 2011, with an effective end date for the tenancy of April 30, 2011.

The Tenants initially withheld rent for April of 2011, as they were entitled to one month of rent under section 51 due to the two month Notice to End Tenancy issued by the Landlords.

The Landlords wrote an email to the Tenants requesting the rent for April, and explained they had contacted the "Rental Tenancy Agency" (reproduced as written), and that, "...the intent of this law is to protect people that rent all the time... However, your situation is different." [Reproduced as written.]

The Landlords testified during the hearing that they thought the Tenants had given them a notice they were ending the tenancy at the end of April and therefore, they were not entitled to the compensation under section 51 of the Act.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords have breached sections 38 and 51 of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit. There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38 of the Act and section 4 of the tenancy agreement signed by the parties.

Therefore, I find the Landlords have breached section 38 of the Act and section 4 of the tenancy agreement. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenants by the Landlords. At no time do the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep a portion of it.

The Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenants. Here the Landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit and I must order them to repay double the deposit to the Tenants, less any amount repaid, pursuant to section 38 and the policy guidelines for the Act.

I also find the Landlords failed to compensate the Tenants with the equivalent of one month of rent, as required under section 51 of the Act. Once the Landlords gave the Tenants a two month Notice to End Tenancy, the Tenants were entitled to the equivalent of one month of rent in compensation under section 51 of the Act. In the normal course, the Tenants would have simply withheld the rent for one month; however, the Landlords demanded the Tenants pay this rent.

The Landlords were under the mistaken impression that the Act varies depending on the type of tenant they are renting to. This is not the case. The Act applies equally to all tenants and to all landlords in the province of British Columbia, who fall under the jurisdiction of the Act.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches of the Act by the Landlords, as described above, have caused the Tenants to suffer a loss.

Having made the above findings, I must Order, pursuant to sections 38, 51 and 67 of the Act, that the Landlords pay to the Tenants the sum of **\$4,000.00**, comprised of

\$1,450.00 for the security deposit (double the security deposit $2 \times 1,250.00 = 2,500.00$, less the \$1,050.00 already paid), \$2,500.00 in compensation for one month of rent, and the \$50.00 fee for filing this Application.

The Tenants are given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The Landlords have breached section 38 of the Act, by failing to return all of the deposit or claiming against it within 15 days of the end of the tenancy or receipt of the forwarding address in writing, and have breached section 51 of the Act, by failing to provide the Tenants with the equivalent of one month of rent in compensation for ending the tenancy with a section 49 notice.

The Tenants are granted and issued a monetary order in the amount of **\$4,000.00**, which may be filed and enforced as an order of the Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 21, 2013

Residential Tenancy Branch