



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prudential Kelowna Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This is an application for an Order to keep the tenant's security deposit of \$437.50.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Does the landlord have the right to keep the tenant's security deposit?

Background and Evidence

The applicant testified that:

- The tenants vacated the rental unit on May 31, 2013 without giving any Notice to End Tenancy.
- They were unable to re-rent the unit because they had received an Order from the City that the unit had to be vacated by the end of June 2013.
- Therefore since they were unable to re-rent the unit they lost the full rental revenue for the month of June 2013, and as a result they're requesting an Order to keep the tenants full security deposit to cover a portion of their loss.

The tenant testified that:

- The landlord had not informed them that the unit was going to have to be vacated by the end of June 2013, and in fact they found out about it from other tenant's.
- It's very difficult to find rental property at that time of year and therefore they took a rental unit as soon as they found one and were unable to give landlord one months notice.
- They don't feel they should have to pay the landlord any money as they were forced in this situation by landlords who are renting a property that should never have been rented out.

Analysis

It is my decision that I will not allow the landlord's request to retain the security deposit for lost rental revenue.

Under normal circumstances if the tenant moves without giving them proper Notice to End Tenancy, the landlord is required to attempt to re-rent the unit and mitigate the loss however in this case since the City had Ordered that the rental unit be vacated the landlord was unable to do so.

The reason that the City had Ordered the rental unit vacated however was the fault of the landlord's, and not the tenants and therefore is not the tenants fault that the landlords were unable to mitigate their loss and I will not allow a claim against the tenant's.

Conclusion

This application to retain the security deposit is dismissed and I've issued an Order for the return of the full security deposit to the tenants.

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: September 10, 2013

Residential Tenancy Branch

