



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit?
Are the tenants entitled to any other compensation and if so, in what amount?

Is the landlord entitled to a monetary award for loss of rent for July?
Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

The rental unit is an apartment near Squamish. The tenants testified that they met the landlord at a rental agency and she offered her apartment to rent to them. The tenants inspected the rental unit and agreed to rent it at a monthly rent of \$1,250.00. The tenants paid the landlord a \$625.00 security deposit on June 24, 2013. The tenant testified that when they met the landlord to discuss renting the suite she told them that she intended to perform some renovations, including replacing cabinets and installing a dishwasher. The tenants said that he would be willing to do the installation after the tenancy started in exchange for a rent reduction. The landlord's form of tenancy agreement included an addendum that required the tenants to pay a security deposit of \$625.00, a 200.00 pet deposit and a \$200.00 non-refundable cleaning fee. The addendum also provided for a \$20.00 per day late payment fee.

The tenants testified that when they arrived at the rental unit to move in on July 1st, the landlord was in the process of replacing cabinets in the kitchen and bathroom and installing a dishwasher and this was contrary to the understanding they had that the work would proceed some time after they had moved in. They said that the kitchen and bathroom were under construction and the door to the rental unit was missing. The landlord told them they could only move their belongings into the main living room. The tenants told the landlord that they considered that she had breached the tenancy

agreement and that they were not prepared to continue the tenancy agreement and would stay for one month only because they did not have anywhere else to stay. The tenants left and later in the day the landlord called to say the rental unit was ready. The tenants returned at 3:00 P.M. The landlord requested payment of rent, a pet deposit and a \$200.00 cleaning fee. She insisted that the tenants pay and sign a condition inspection report and mutual agreement to end tenancy before she would allow them to enter the rental unit. The tenant testified that he had a cash payment ready, but he wanted to inspect the rental unit to satisfy himself that the work was complete before he paid the landlord. He said the landlord refused to allow him to inspect without the payment and then refused to allow him to remove his belongings from the rental unit.

The tenants said they were not able to remove their belongings from the rental unit until the following day and they were forced to stay with relatives because they had nowhere else to go. The tenants claimed that they had to pay for alternative accommodation. They claimed for the return of their \$625.00 security deposit and requested an additional award of \$1,250.00, for a total claim of \$1,875.00. They filed their claim on July 2, 2013.

The landlord testified that she exercised her prerogative as landlord to have the work done to the rental unit by her chosen contractor before the tenants moved in. She said that the fact that the work was not fully complete on July 1st when the tenants arrived to move-in was not a serious concern; she considered that the tenant over-reacted and behaved rudely and was hostile. The landlord said that she accepted the tenants' decision that they would only stay at the unit for 30 days.

The landlord said that the tenants left and then called her at 4:30 P.M. to ask if the suite was ready. She replied that it had been ready since 3:00 P.M. She said that the tenants arrived by car at 5:00 P.M. The male tenant met her at the suite. She asked the tenant for the rent, pet deposit and the cleaning fee. She said the tenant refused to pay it but demanded to be allowed into the rental unit. She refused to allow him in until he paid the sum demanded and signed a mutual agreement to end tenancy as well as a condition inspection report. The landlord said that the tenant then accused her of breaking the lease, told her that he was not paying anything and demanded his security deposit back.

The landlord said that the tenants removed their belongings late in the day on July 2, 2013. The tenant demanded the return of his security deposit. She told the tenant that she was not obliged to return it until after he provided a forwarding address and that she may have a legitimate claim to keep the deposit. The landlord said that the tenant's sister wrote her address as the forwarding address and gave it to her.

In her application for dispute resolution the landlord claimed payment of the sum of \$1,875.00. She requested an order to retain the tenant's security deposit and she claimed a further \$1,250.00 as lost rent for the month of July. At the hearing the landlord said that she should be entitled to keep the deposit because the tenants dirtied

the rental unit and she had to perform some cleaning as a result of their storage of belongings in the unit, their traffic in and out of the unit, food placed in the refrigerator and the presence of the tenant's cat in the bedroom. The landlord did not submit any documents or photographs to support her position that cleaning of the unit was required.

Analysis

I accept the tenants' testimony and supporting evidence that the rental unit was not ready for occupancy on July 1st when the tenants arrived with their belongings to move-in. The tenants and the landlord both acknowledged that because of the tenants objections to the state of the rental unit, the tenants were going to move into the rental unit for one month and that the tenancy would last for only one month. The tenant said that when he arrived at the rental unit on the afternoon of July 1st in response to the landlord's message that the unit was ready for occupancy, he wanted to satisfy himself that it was indeed ready, but the landlord refused to let him enter to inspect before he paid her, \$1,250.00 in rent plus a \$200.00 pet deposit and a further \$200.00 as a non-refundable cleaning fee and not before he signed a mutual agreement and a condition inspection report. The landlord testified that she would not allow the tenant access to the unit until he paid the above amounts and signed the documents she presented to him.

Having regard to the fact the rental unit was not ready for occupancy when the tenants first attended to move-in, I find that it was not unreasonable for the tenant to ask to inspect the unit to verify that it was ready for occupancy before he paid the landlord and signed documents. I find that the tenants were justified in the circumstances in refusing to pay rent and other charges demanded by the landlord and declaring the tenancy agreement to be void and at an end. This is particularly so where, as here, the landlord was demanding a payment that was not permitted under the provisions of the *Residential Tenancy Act*.

The *Act* provides by section 19 that the landlord may not require or accept either a security deposit or a pet deposit that is greater than the equivalent of ½ of one month's rent. Also pursuant to section 20 (e) of the *Act*, a landlord may not require or include a term that the landlord automatically keeps all or part of the security or pet deposit at the end of the tenancy agreement. The landlord testified at the hearing that it is her practice in all her tenancies to require a non-refundable cleaning fee to be paid by tenants at the commencement of a tenancy. She said that she has obtained legal advice that supports the legitimacy of her practice, but she provided no other specific evidence to support her position.

I find that the landlord's practice of demanding payment of a non-refundable cleaning charge, in addition to a security deposit equivalent to a half month's rent is a contravention of the quoted provisions of the *Residential Tenancy Act* because it amounts to a requirement for a deposit greater than permitted under the *Act* and includes a term automatically permitting the landlord to keep part of that deposit at the

end of the tenancy. I find that the landlord's insistence upon such a payment provides a further ground for the tenants' refusal to proceed with the tenancy. I find that the tenants were entitled to refuse to proceed with the tenancy in the face of this demand and to declare the tenancy agreement to be void and at an end and request the return of their security deposit.

The tenants did not provide any documentary evidence to support a claim for payment of an additional sum for rent paid for July and I find that they would have been responsible for a rental payment for July in any event. I deny the tenants claim for payment of any amount in addition to the \$625.00 security deposit paid to the landlord.

For the reasons stated I find there is no merit to the landlord's claim for a monetary award or for an order to retain the security deposit. The landlord did not submit any documentary evidence to support a claim to retain the security deposit, or any part thereof. The landlord's claims in her application for dispute resolution are dismissed without leave to reapply.

Conclusion

I award the tenants the sum of \$625.00, being the amount of their security deposit. The tenants are entitled to recover the \$50.00 filing fee for their application for a total award of \$675.00 and I grant the tenants a monetary order under section 67 in the said amount. This order may be registered 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: October 03, 2013

Residential Tenancy Branch