



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting them to retain the pet damage deposit and a cross-application by the tenants for an order for the return of double the security and pet damage deposits. Both parties seek to recover the filing fees paid to bring their respective applications. Both parties participated in the conference call hearing.

The landlord had originally applied for a \$200.00 order, but at the hearing reduced their claim to \$124.74 plus the filing fee.

Issues to be Decided

Should the landlord be authorized to retain the pet damage deposit?

Are the tenants entitled to the return of double their security and pet damage deposits?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2012 and ended on June 30, 2013 and that at the outset of the tenancy, the tenants paid a \$495.00 security deposit and a \$200.00 pet damage deposit.

The landlord provided a copy of an addendum to the tenancy agreement which is signed by both parties and provides in part as follows:

A mandatory Professional Flea Inspection must be completed upon vacating the unit. You will be required to provide a copy of the Flea Inspection Report from the Professional Pest Control Company, clearly stating that the unit either has fleas or does not have fleas. [reproduced as written]

The landlord took the position that they are entitled to the cost of a flea inspection and provided an invoice showing that they paid for that inspection. Their claim is \$124.74 which is lower than the invoiced amount as they received a discount from the company providing the service.

The tenants did not deny that they failed to arrange and pay for a professional flea inspection. The tenants took the position that the aforementioned provision is contrary to the Act as there is no specific provision in the Act whereby such an inspection is permitted and as section 5 of the Act prevents parties from contracting out of the Act, the tenants argued that the clause cannot be enforceable.

The tenants seek the return of double their deposits. The landlord's claim against the deposits was filed on July 12, 2013, which is 12 days after the end of the tenancy.

Analysis

There is a general principle of contract law that parties are free to enter into contracts and determine for themselves which terms are appropriate without arbitrary and unreasonable government restrictions. The *Residential Tenancy Act* (the "Act") specifies that certain provisions may not be part of tenancy agreements and section 6(3) states that provisions in agreements are not enforceable if they are inconsistent with the Act or unconscionable. The Act does not purport to otherwise limit the parties' freedom of contract.

In order to determine whether the clause in question is enforceable, I must determine whether it is inconsistent with the Act or unconscionable. I find that there is no specific prohibition in the Act preventing parties from agreeing that a professional flea inspection must take place if a party has a pet. Rather, it appears to be a reasonable term addressing a problem which may occur fairly commonly. Neither do I find the term to be unconscionable as it is not in my view oppressive or grossly unfair to the tenants. I note that the landlord collected a pet damage deposit which was less than one half of the amount they were legally entitled to collect and as the inspection cost amounted to approximately $\frac{1}{4}$ of the amount they were legally entitled to collect, I find the term to be in no way unconscionable.

For these reasons, I find that the landlords are entitled to recover the amount paid for the flea inspection as well as the \$50.00 filing fee paid to bring their application and I award them \$174.74 which represents both amounts.

Section 38(6) of the Act provides that landlords are only obligated to pay the tenants double the amount of the deposits if they fail to file their claim within 15 days of the later

of the end of the tenancy and the date they receive the forwarding address in writing. I find that the landlords complied with the statutory timeframe and that the tenants are not entitled to double their deposits and therefore dismiss their claim.

Conclusion

I order that the landlord retain \$174.74 from the pet deposit and return the balance of \$25.26 together with the \$495.00 security deposit to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$520.26. This order may be filed in the Small Claims Division of the Provincial 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 10, 2013

Residential Tenancy Branch

