



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary order and return of the security deposit. The hearing was conducted by conference call. The named tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?
Are the tenants entitled to the return of their security deposit, including double the amount of the deposit?

Background and Evidence

The rental unit is a suite in the landlord's house in Burnaby. The tenancy began in December, 2012 for a fixed term. The rent was \$1,000.00 per month and the tenants paid a \$500.00 security deposit on December 2, 2012.

On June 17, 2013 a municipal water main burst and the rental unit was flooded. The tenants immediately moved out at the request of the landlord and the restoration company. The tenants found other temporary accommodation. They rented a storage pod and stored their belongings in the container on the rental property. The tenants requested the refund of pro-rated rent for the month of June in the amount of \$433.33. In a letter to the landlord dated June 22, 2013, the tenants confirmed their expectation that they would move back into the rental unit when the restoration was complete.

The tenant said that the flood and water flow into the rental unit was partly the result of a storm drain clogged with debris from trees. The tenant said that the drain was located on the rental property and if the drain had been cleared it may have prevented the flooding of the rental unit, or lessened the extent of the flood.

The tenants contacted the landlord in September to inquire when the repairs to the rental unit would be completed. They did not receive a reply. At the beginning of October no restoration work had been done; the only work that had been performed was the removal of contaminated flooring and drywall. On October 11, 2013 the tenants delivered a letter to the landlord. They stated in the letter that they had decided to find

other permanent accommodations because four months had passed since the flood and the renovations had not progressed. The tenants said they considered the contract to be frustrated. They demanded the return of the \$500.00 security deposit and payment of pro-rated rent for June within 15 days from the date of the letter. When the landlord failed to return the deposit and pay the prorated rent the tenants applied for dispute resolution on November 5, 2013.

In addition to pro-rated rent and the return of the security deposit, the tenants claimed payment of the sum of \$1,724.36, being the cost of renting storage for their belongings for four months. The tenants claimed to be entitled to the cost of storage because they alleged that the flood was due in part to the landlord's negligence in failing to clear the drain. The tenants said that the landlord was warned before the water main burst that water was pooling at the drain and it needed to be kept clear.

The landlord testified that he had made efforts to keep the drain free, including cutting back the surrounding cedar trees. He agreed that the tenants were entitled to payment of pro-rated rent for June, but he said that the tenants should have given him one month's notice to end the tenancy rather than claiming on October 11th that the tenancy was frustrated. The landlord said that he has had problems with his insurer and with the restoration company as well as his own health problems and the restoration work is still not done, but is nearing completion.

Analysis

The tenants were forced to move out of the rental unit in mid-June due to flooding that resulted from a burst water main. I do not find that there is sufficient evidence to conclude that the landlord was negligent in failing to keep a storm drain clear of debris, or that such failure, if it occurred was the cause of flooding of the rental unit.

The tenants were forced to move out of the rental unit in June and were deprived of the use and enjoyment of the rental unit for part of the month, despite having paid rent for the full month; they are therefore entitled to an award of pro-rated rent as claimed for the month of June.

I find that the tenants were entitled to treat the tenancy as being at an end as of October 11, 2013, when they informed the landlord that they would seek other living accommodation due to the delay in completing restorations. The tenants made previous enquiries and requested information from the landlord about the progress of the work, without receiving a reply. It was a material term of the tenancy that the landlord was to provide living accommodation suitable for occupancy and I find that the tenants gave the landlord notice that they expected him to fulfill that obligation and a reasonable time to comply before advising him that they were ending the tenancy. I consider this to be a preferable analysis of the events leading to the end of tenancy rather than the invocation of the doctrine of frustration, although it leads to the same result.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I have found that the tenancy ended on October 11, 2013. I am satisfied that the tenants provided the landlord with her forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

Conclusion

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$1,000.00 plus prorated rent for June in the amount of \$433.33. The tenants' claim for recovery of their storage costs is denied. The tenants are entitled to recover the \$50.00 filing fee for this application for a total award of \$1,483.33. 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: February 18, 2014

Residential Tenancy Branch

