



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Metro Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This Review Hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to retain the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witness also provided evidence under oath.

Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The Parties signed a tenancy agreement on July 24, 2013 for a tenancy to start on August 1, 2013 however the Parties do not dispute that the move-in inspection was conducted on August 9, 2013 and that the Tenant was to take occupation on August 12, 2013. The Landlord submitted a copy of the cheque noted to be for rent for August 12 – 31, 2013 in the amount of \$826.45. The Parties agree that the Landlord collected \$675.00 as a security deposit and not \$625.00 as stated by the Landlord at the previous hearing.

The Landlord states that the Tenant ended the tenancy on August 10, 2013 and did not move into the unit. The Parties agree that the rent cheque was not cashed. The Landlord claims the retention of \$625.00 from the security deposit for unpaid rent.

The Tenant states that prior to signing the tenancy agreement he informed the Landlord that visitors were expected from out of country and wanted to be certain that there would be no problems with his visitors staying at the unit. The Tenant states that the Landlord told the Tenant that travel itineraries were required for visitors as there was a maximum stay of 14 days for visitors and that there would be no problem with the visitors if they received the itinerary. The Tenant states that on August 9, 2013 the Landlord told him that after 14 days a visitor would be considered occupants and that in order for his visitors to occupy the unit he must provide proof of income. The Tenant states that this was impossible to carry out before he was to take occupancy and that if he went ahead with the tenancy he could face having to move again shortly thereafter. The Tenant states that the Landlord misled the Tenant when he signed the tenancy agreement about their restrictions on visitors.

The Landlord states that the 14 day limit is not part of the tenancy agreement but as long as the tenants provide an itinerary the Landlord would be fine. The Landlord states that after the tenancy agreement was signed that the Tenant told her that the visitors would be here for two years so the Landlord told the Tenant that they would be considered an occupant at that length of time and that more documents were necessary for the visitors to occupy the unit. The Tenant confirms that he was aware when he signed that the tenancy agreement that additional proof of income was required for additional occupants. The Tenant argues that he was not told that his visitors would be considered occupants when he signed the tenancy agreement and that he was entitled to cancel the tenancy when told they were considered occupants.

Analysis

Section 6 of the Act provides that a term of a tenancy agreement is unenforceable if it is unconscionable. It is clear that at the time of signing the tenancy agreement the right to

have visitors in the unit was a primary concern to the Tenant. It is also clear that this concern was addressed by the Landlord prior to the tenancy agreement being accepted by the Tenant. The Landlord clarified the tenancy agreement term in relation to occupants and guests by telling the Tenant that only an itinerary was required for the visitors to remain in the unit beyond 14 days and by implication that the visitors would not be considered occupants otherwise. No other clarification was provided before or at the signing of the tenancy agreement and the Tenant accepted the tenancy agreement on these terms. It is also clear that after the tenancy agreement was signed, the Landlord informed the Tenant that the visitors were considered occupants. In effect, the Landlord changed a vital term of the tenancy agreement and removed the certainty earlier provided to the Tenant. As a result, I find that to enforce the terms of the tenancy agreement would be manifestly unfair or unconscionable in the circumstances and I dismiss the Landlord's application. As the Landlord still holds the security deposit of \$675.00 plus zero interest I order the Landlord to return this amount forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$675.00**. If necessary, this order may be filed 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: March 14, 2014

Residential Tenancy Branch

