



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing was scheduled in response to an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both tenants attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the landlord did not appear. Evidence submitted by the tenants includes the Canada Post tracking numbers for the registered mail, and the Canada Post website informs that the item was "successfully delivered" on May 07, 2014.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which the tenants testified began on November 29, 2013. Monthly rent of \$2,190.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,095.00 was collected.

The tenants testified that on or about April 06, 2014 the landlord informed them of an offer for purchase of the unit which was pending. It is understood that a condition of this offer was that the purchaser would take possession of the unit effective on or about May 17, 2014. Following from all of this, the landlord and the tenants then entered into various communications related to ending the tenancy.

On April 08, 2014 the parties signed a "Mutual Agreement to End a Tenancy," pursuant to which it was agreed that tenancy would end on May 17, 2014. By way of an

addendum to the "Mutual Agreement," the parties set out additional terms of agreement, one of which was that the parties would undertake an inspection of the unit and complete an inspection report on April 08, 2014. A copy of this report is in evidence and is shown as a move-in condition inspection report, even while the tenancy actually began on November 29, 2013.

Other terms in the addendum include, but are not necessarily limited to, agreement that the landlord "will pay one full month rent compensation as soon as the agreement is signed," that the tenants "can leave the place at any date after April 10th 2014 without any penalties: 24 HRS notice and refund of the unused portion of the rent," and that the landlord "will pay the prorated rent amount from the date the tenants vacate the place until June 10th 2014 (inclusive)." During the hearing the tenants confirmed that pursuant to the addendum, the landlord paid "one full month rent compensation" in the amount of \$2,190.00 at the time when the agreement was signed on April 08, 2014.

Subsequently, by letter dated April 26, 2014, the tenants gave notice to end tenancy effective April 27, 2014, and they provided their forwarding address in this letter. A move-out condition inspection report was completed with the participation of both parties on April 28, 2014. The tenants also provided their forwarding address on the move-out condition inspection report. Following this, by letter dated May 01, 2014, for the purposes of repayment of their security deposit the tenants once again informed the landlord of their forwarding address.

Thereafter, the tenants received cheques from the landlord as follows:

\$1,095.00: *repayment of security deposit*

\$219.00: *reimbursement of pro-rated rent paid for the 3 day period of April 28, 29 & 30, 2014.*

The tenants take the position that the landlord has failed to abide by other terms agreed to in the addendum to the "Mutual Agreement." In particular, the tenants consider that they remain entitled to the following compensation:

- payment of 1 month's rent for May of \$2,190.00, and
- prorated payment of rent from June 1 to June 10, 2014 of \$730.00

In their application, the tenants also seek recovery of the \$50.00 filing fee. The total amount of compensation presently still sought by the tenants is therefore \$2,970.00 (\$2,190.00 + \$730.00 + \$50.00).

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 50 of the Act speaks to how **Tenant may end tenancy early following notice under certain sections**, in part:

50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**, and provides in part:

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, I find that there is no evidence of the landlord's having issued a formal 2 month notice to end tenancy for landlord's use of property. In any event, the tenants appear to have received from the landlord payment of an amount (\$2,190.00) which is "the equivalent of one month's rent payable under the tenancy agreement."

I further find that the tenants' 1 day (24 hour) notice to end tenancy effective April 27, 2014 does not comply with the statutory provisions set out above in section 50(1) of the Act which require "10 days' written notice." Despite this, the tenants appear to have received from the landlord a refund (\$219.00) of "rent paid for a period after the effective date of the tenant's notice."

Section 5 of the Act provides that **This Act cannot be avoided:**

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In summary, payments already made by the landlord to the tenants include the equivalent of 1 month's rent payable under the tenancy agreement (\$2,190.00), reimbursement of rent paid for the last 3 days in April (\$730.00), and repayment of the security deposit (\$1,095.00). I find that the tenants have failed to meet the burden of proving entitlement to any further compensation. Specifically, I find that the aspects of the addendum to the "Mutual Agreement" which broadly concern payment by the landlord of prorated rent from the date when tenancy ends to June 10, 2014, are of no force and effect, as they effectively reflect attempts to "avoid or contract out" of the Act. Accordingly, these aspects of the application are hereby dismissed.

As the tenants have not succeeded with the principal aspects of their application, their application to recover the filing fee is also hereby dismissed.

Conclusion

The tenants' application is hereby dismissed in its entirety.

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: August 07, 2014

Residential Tenancy Branch

