



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MND, FF
For the tenant: MNSD, OLC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenants' security deposit, a monetary order for alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The tenants applied for a return of their security deposit, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee paid for this application.

Both parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenants' security deposit and for recovery of the filing fee paid for this application?

2. Are the tenants entitled to a return of their security deposit, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee paid for this application?

Background and Evidence

The parties submitted that written tenancy agreement which shows that this tenancy began on January 15, 2014, monthly rent was \$1900, and that the tenancy was for a fixed term of 1.5 months, set to end on February 28, 2014. The tenancy agreement shows that the tenants paid a security deposit of \$2500 on January 8, 2014, with a handwritten notation that this amount included a pet damage deposit, although the section of the tenancy agreement indicating a pet damage deposit was left blank.

The tenants submitted a copy of a written addendum to the tenancy agreement, which stated that the tenancy was to carry over for :2 months (additional), with rent for March in the amount of \$1900 and April for \$1850. The addendum additionally stated that the "tenancy to end April 30, 2014, unless previously stated."

The landlord submitted that the tenancy ended on April 30, 2014, and the tenants submitted that they vacated on April 29, 2014. The parties agreed that the landlord has returned a portion of their security deposit to the tenants, in the amount of \$650.

Landlord's application-

The landlord's monetary claim \$1850. The landlord submitted no particulars or breakdown of his monetary claim, as required by section 59(2) of the Act; however, the landlord submitted that this amount was intended to compensate him for loss of rent revenue for May 2014, as the tenants vacated the rental unit at the end of April without providing a proper notice.

The tenants, when questioned, stated that they understood that this was the landlord's claim.

The landlord submitted further that he lost a new tenant for May as he was not sure the tenants would vacate at the end of April, that he requested, but did not receive a formal, written notice from the tenants that they were vacating by the end of April, and therefore could not promise the new tenant that the tenants would be out of the rental unit.

The landlord's relevant documentary evidence included, but was not limited to, email exchanges between the parties, a written tenancy agreement, and a condition inspection report.

Tenants' response-

The tenants stated that they gave the landlord notice that they were ending the tenancy, that the landlord had re-rented the rental unit for May, as they had met the new tenant and had entire conversations with the new tenant, and that the new tenant was to begin his tenancy in May 2014.

Tenants' application-

The tenants' monetary claim is \$1850, which is the balance of their security deposit/pet damage deposit, after the landlord had returned \$650.

The tenants' relevant documentary evidence included, but was not limited to, a condition inspection report, a written tenancy agreement with the addendum, and email exchanges between the parties.

The tenants submitted that they gave the landlord their written forwarding address on May 1, that there was no inspection of the rental unit with the landlord at the beginning of the tenancy, as he preferred to inspect on his own, and that they did not receive the condition inspection report for several weeks after the tenancy began.

The tenants submitted further that the landlord never asked for a 30 day notice to vacate until May 2, which they concluded showed the landlord's lack of good intention. The tenants submitted further that the parties agreed to meet on April 29, to exchange the keys to the rental unit, which is what happened.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Landlord's application-

As to the landlord's claim that he suffered a loss of rent revenue for May due to the tenants' failure to provide a proper notice of their intent to vacate, under section 44(1)(b) of the Act, one of the ways a tenancy ends is when the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

In reviewing the addendum to the written tenancy agreement, signed by both parties, I find that the term relating to the end of the tenancy is clear and that the tenants were required to vacate the rental unit on April 30, 2014. The rent for April was reduced and there was no indication that this amount or the original amount would continue if the tenancy extended beyond April 2014.

The landlord was at liberty, and by all appearances, did obtain a new tenant for May, regardless of whether that tenancy started or not. Had the tenants failed to vacate the rental unit by the end of April pursuant to the terms of the written tenancy agreement, the landlord's remedy would be seeking remedy through dispute resolution for overholding and an order of possession for the rental unit.

As I find the evidence shows that the tenancy agreement required the tenants to vacate by April 30, 2014, I find the landlord submitted insufficient evidence to prove his claim for loss of rent revenue for May 2014, and I dismiss his application, including his request to recover the filing fee.

Tenants' application-

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

In this case, the landlord filed his application within 15 days of the end of the tenancy; however, as I have dismissed his application claiming against the tenant's security deposit, I find the tenants are entitled to recover their security deposit of \$1850.

As the tenants' application is successful, I award the tenants recovery of the filing fee of \$50 paid for their application.

Due to the above, I therefore find the tenants are entitled to a monetary award of \$1900, comprised of their security deposit in the amount of \$1850 and recovery of the filing fee of \$50.

Conclusion

The landlord's application is dismissed.

The tenants' application has been granted as I have found they are entitled to a monetary award of \$1900.

The tenants are granted a monetary order in the amount of \$1900 and it is enclosed with their Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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: September 15, 2014

Residential Tenancy Branch

