



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act, regulations and tenancy agreement, for the return of the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on June 20, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation for loss or damage and if so how much?
2. Are the Tenants entitled to the return of their security deposit?

Background and Evidence

This tenancy started on October 17, 2013 as a fixed term tenancy to March 31, 2014 and then continued on as a month to month tenancy. Rent was \$1,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 in advance of the tenancy.

The Tenant said the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated April 28, 2014. After receiving this notice the Tenants' gave their written notice on April 29, 2014 that they were moving out of the rental unit on May 13, 2014. The Tenant continued to say that as a result of the 2 Month Notice to End Tenancy the Tenant has made an application for compensation from the Landlords. The Tenant said his claim is as follows:

Return of Security Deposit	\$1,000.00
Partial return of May, 2014 rent, (\$1,800.00 /31 days in May = \$58.06/day) (\$58.06 X 18 days in May = \$1,045.08)	\$1,045.08
Equivalent of one month's rent as per the Requirements of a 2 Month Notice to End A Tenancy (\$1,800.00).	<u>\$1,800.00</u>
Total	<u>\$3,845.08</u>
Less	
Fortis Bill paid by the Landlord	\$ 445.85
Amount returned by Landlords on May 28, 2014	<u>\$1,498.15</u>
Total	<u>\$1,944.00</u>
Amount of Tenants claim	<u>\$1,901.08</u>

In addition the Tenant said the Landlord retained \$100.00 from the security deposit for damage to a snow plow blade, which the Tenant said he did not agree to and that it was normal wear and tear on the blade. The Tenant continued to say that there was no move in condition inspection therefore the Landlord has no claim on his security deposit. The Tenant said the total security deposit is included in his calculations.

The Landlords said that they did not want to be Landlords and did not intend to be Landlords when they purchased the house from the Tenants, but the situation end up with the Tenants renting the house back while the Tenants looked for a home to purchase. The Landlords continued to say that the Tenant used his knowledge of the Residential Tenancy Act and their lack of knowledge of the Act to issue a 2 Month Notice to End Tenancy for Landlord's Use of the Property so that the Tenant could profit by the situation. The Landlords said they are not disputing the calculation of the Tenants' claim but they are disputing the morality of the Tenant's actions. The Landlords said they believe the Tenant took advantage of their lack of knowledge of the Tenancy Act.

The Landlords continued to say that they did retain \$100.00 of the Tenants' security deposit for damage to the snow blade as they believe the Tenant damaged the blade and it was not normal wear and tear. The Landlord said they repaired the quad at the start of the tenancy, but they did not do a move in condition inspection report at the start of the tenancy.

The Landlords said in closing that there was no hardship to the Tenants as a result of the 2 Month Notice to End Tenancy therefore they are requesting that the compensation under that notice be voided.

The Tenant said he is requesting compensation from the Landlord as stated in the Act, because the Landlord ended the tenancy with a 2 Month Notice to End Tenancy for the Landlord's Use of the Property.

Analysis

Section 16 of the Act says the rights and obligation of both the Landlord and Tenant start when a tenancy agreement is entered into.

When a tenancy agreement is entered into or when a contract is signed it is the party's responsibility to inform themselves of the rights and obligations of that contract. In this situation the Landlords said they believe the Tenant took advantage of them because they were not knowledgeable about the Tenancy Act. Lack of knowledge is regrettable but it is not credible defense for a dispute when the information about tenancy agreements is readily available at the Residential Tenancy Branch offices, Services BC offices and on the Residential Tenancy Branch web site. As a result I do not accept the Landlords' request to void the Tenants claim on the grounds that they did not understand the process and that the Tenant took advantage of them.

In addition section 24 of the Act says a landlord's claim against a tenant's security deposit is extinguished if the landlord does not complete a move in condition inspection report as required by the regulations. In this situation both parties agree there was no move in condition inspection report completed; therefore the Landlord's claim to retain \$100.00 of the Tenant's security deposit for damage to the snow blade is dismissed without leave to reapply.

Further:

Section 50 of the Act says: (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.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Section 51 of the Act says: (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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As both parties agree the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated April 28, 2014 was issued by the Landlord and the Landlord is not disputing the Tenants' calculation of claim I find for the Tenants and award the following compensation:

Return of Security Deposit	\$1,000.00	
Partial return of May, 2014 rent, (\$1,800.00 /31 days in May = \$58.06/day) (\$58.06 X 18 days in May = \$1,045.08)	\$1,045.08	
Compensation of the equivalent of one month's rent as per the requirements of a 2 Month Notice to End A Tenancy (\$1,800.00).	<u>\$1,800.00</u>	
Total		<u>\$3,845.08</u>
Less		
Fortis Bill paid by the Landlord	\$ 445.85	
Amount returned by Landlords on May 28, 2014	<u>\$1,498.15</u>	
Total		<u>\$1,944.00</u>
Amount owing to the Tenants		<u>\$1,901.08</u>

As the Tenants have been successful in this matter, the Tenants are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of \$1,951.08 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia

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 21, 2014

Residential Tenancy Branch

