



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNR, MND, MNDC, FF
For the tenant: MNSD, MNDC, 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 landlords applied for authority to retain the tenants’ security deposit, a monetary order for unpaid rent, alleged damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenants applied for a return of their security deposit and pet damage deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

All 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.

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.

Preliminary matter-The tenants denied receiving the landlords’ photographic evidence, which contained depictions of the rental unit in support of the landlords’ claim for cleaning. When discussing an adjournment, the landlords waived their claim for cleaning the stove and refrigerator, and the hearing proceeded on the remaining monetary claim of the landlords and of the tenants.

Issue(s) to be Decided

1. Are the landlords entitled to retain the tenants' security deposit and pet damage deposit, further monetary compensation, and to recover the filing fee?
2. Are the tenants entitled to a return of their security deposit and pet damage deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on July 1, 2013, ended on June 30, 2014, when the tenants vacated the rental unit, monthly rent was \$1100, and the tenants paid a security deposit and pet damage deposit of \$550 each at the beginning of the tenancy. The landlords have not returned either deposit as they have claimed against the deposits.

Landlords' application-

After waiving their claim for \$18.50 for cleaning the refrigerator and \$18.50 for cleaning the stove, the landlord's monetary claim was comprised of \$1100 for loss of rent revenue for July 2014 and carpet cleaning of \$125.99.

As to the carpet cleaning, the tenants agreed to reimburse the landlords this amount.

In support of their request for loss of rent revenue for July 2014, the landlords submitted that the tenants failed to provide a 30 day notice that they were vacating the rental unit, resulting in lost revenue for July 2014. The landlords submitted further that they never received a written notice that the tenants were leaving and did not actually know until June 29, 2014, that the tenants were vacating at the end of June.

The landlords' relevant documentary evidence included a copy of the written tenancy agreement, which shows that the tenancy began on July 1, 2013, for a fixed term through June 30, 2014. Additionally, the part of the form dictating the terms of the tenancy thereafter was partially stricken through by the landlords, so that the sentence read "C. At the end of this time the tenancy will continue ~~on a month to month basis, or~~ another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear calendar month before the end of the term."

The landlords acknowledged an error in marking through the sentence.

In response, the tenants submitted that the landlords suggested that they leave the rental unit and that they did provide the landlord with a notice they were vacating. Additionally, the tenants submitted that they believed the tenancy ended on June 30, 2014, as per the written tenancy agreement.

Tenants' application-

The tenants' monetary claim is \$2200, comprised of their security deposit of \$550, doubled to \$1100, and their pet damage deposit of \$550, doubled to \$1100.

The tenants submitted that they are owed double their security deposit and pet damage deposit as the landlord failed to return these deposits within 15 days of the end of the tenancy, after having provided the landlords with their written forwarding address on June 30, 2014.

In response, the landlord confirmed receiving the tenants' written forwarding address on June 30, 2014.

Analysis

Landlord's application-

Loss of rent revenue-

In the case before me, the written tenancy agreement form required that if the parties chose a fixed term option, as they did in this case, that they then mark either 4.C, which would extend the tenancy on a month-to-month basis or another fixed term, or D, which would require the tenants to vacate at the end of the original fixed term. The parties marked option C, which was then altered by the landlords to remove the month-to-month choice, but did not designate another length of term.

Under section 6(3) of the Act, a term in a tenancy agreement is not enforceable if the term is unclear. I find that the term in the parties' tenancy agreement regarding the possible continuation of the tenancy to be unclear and therefore unenforceable, as the landlords altered the document to a degree that it became contradictory and confusing as there then was no clear understanding for at least the tenants as to when this tenancy ended.

I find that the landlords' alteration of that portion of the tenancy agreement voided this portion and find the tenants' assertion that they believed the tenancy ended on June 30, 2014, as marked in section 4. B, to be a reasonable inference.

I further find that the tenancy did not convert to a month-to-month tenancy thereafter at the end of the fixed term, as that section of the tenancy agreement was not marked. I therefore find that that the tenancy ended on June 30, 2014, the original fixed term, and the tenants were therefore not obligated to provide the landlords with a written notice.

Accordingly the landlords' claim for loss of rent revenue for July 2014 is dismissed.

Carpet cleaning-

I grant the landlords the amount of \$125.99, as the tenants agreed to this amount.

Tenants' application-

Security deposit and pet damage deposit, doubled-

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 pet damage 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.

Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit and pet damage deposit.

As the landlords filed their application claiming against the tenants' security deposit and pet damage deposit on July 15, 2014, which was within 15 days of the end of the tenancy, I find the landlords complied with their obligation under the Act and the tenants are not entitled to double the amount of their two deposits.

I do, however, find that the tenants are entitled to a return of their security deposit and pet damage deposit, less the amount of the landlords' monetary award of \$125.99.

Both applications-

As I have found at least partial merit with both parties' applications, I decline to award either party recovery of their filing fee.

Conclusion

The landlords are granted a monetary award of \$125.99.

The tenants are granted a monetary award of \$1100, comprised of their security deposit and pet damage deposit of \$550 each.

I offset the tenants' monetary award with the landlords' monetary award, and grant the tenants a monetary order for the balance due, in the amount of \$974.01, which is enclosed with their Decision.

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

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: December 19, 2014

Residential Tenancy Branch

