



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD, FF
For the landlords: 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 ("Act").

The tenants applied for a return of their security deposit, doubled, and for recovery of the filing fee paid for their application.

The landlords applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss, for recovery of the filing fee paid for this application.

All named 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 application 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter-

During introductory matters such as the ones listed above, the landlords inquired about their application for dispute resolution as I had not mentioned their application. The application was not initially before me, and the landlords submitted their application was filed and told that it would be heard at the same time as the tenants' application, as a

cross application, according to what they were told by the Residential Tenancy Branch ("RTB"). The tenants confirmed receiving the landlords' application. I note that the tenants filed their application on September 22, 2014, and the landlords filed their application on March 27, 2015.

I placed the hearing on hold while I located the landlords' file. I was able to review the evidence and hear from the landlords regarding their application, and the hearing proceeded on both applications.

Issue(s) to be Decided

1. Are the tenants entitled to recovery of their security deposit, compensation for double the amount of their security deposit, and to recovery of the filing fee paid for this application?
2. At the landlords entitled to retain the tenants' security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence and the written tenancy agreement shows that this 1 year, fixed term tenancy began on January 1, 2014, that monthly rent was \$1900.00, and that the tenants paid a security deposit of \$900.00 on or about December 31, 2013.

The undisputed evidence of the parties is that the tenants vacated the rental unit prior to the end of the fixed term, or August 31, 2014, and the landlords have not returned the tenants' security deposit.

Tenants' application-

The tenants' monetary claim is in the amount of \$1850.00, comprised of their security deposit of \$900.00, doubled to \$1800.00, and for recovery of the filing fee paid for this application of \$50.00.

The tenants submitted that they provided the landlord with their written forwarding address on the move-out condition inspection report, on August 31, 2014, and on a separate notice on July 23, 2014, also containing their notice to vacate on August 31, 2014. The tenants submitted further that despite their requests, the landlord has not returned their security deposit. Into evidence, the tenants submitted a copy of the condition inspection report and the written notice.

The tenants acknowledged that the tenancy ended prior to the end of the fixed term listed on the written tenancy agreement, but that the male landlord handed the tenants a mutual agreement to end the tenancy early, or August 31, 2014, with the proviso that the landlord would keep the security deposit if they ended the tenancy earlier.

Landlords' response-

The landlord confirmed receipt of the tenants' written forwarding address on the dates and manner mentioned by the tenants.

The landlords submitted that they were entitled to retain the tenants' security deposit as per the terms of the mutual agreement to end the tenancy. The landlords submitted a complete copy of the mutual agreement.

The landlords referred to one of the terms in the mutual agreement to argue that they were entitled to retain the tenants' security deposit, that being that the tenants will pay the landlord an additional one-half month's rent as compensation for early end to the tenancy.

Tenants' rebuttal-

The tenants submitted that in July they signed the mutual agreement to end the tenancy on August 31, 2014, that they paid their monthly rent for August and vacated on August 31, 2014, as per the agreement. The tenants submitted that they therefore did not end the tenancy early, but on the mutually agreed upon date.

As to the mutual agreement to end the tenancy, it must be noted that the landlords used a part of the 1 page, standard form made available by the RTB, or more specifically the title, "Mutual Agreement to End a Tenancy, the introduction, the landlords' names, address and contact telephone numbers, and the same information for the tenants; however, the rest of the form was deleted and the landlords added 15 additional terms as addendums, referring to the tenants moving out by August 31, 2014, cleaning the home, and ensuring the home and yard are well maintained for any prospective purchasers the landlords' real estate agent may bring to the residential property, in all, a 2 page document.

The agreement ended with the term that the tenants agree to vacate the rental unit by 6:00 p.m. on August 31, 2014, and signed by all parties.

Landlords' application-

The landlords' monetary claim is \$3900.00, comprised of loss of rent revenue for two months, the filing fee of \$50.00, and \$50.00 for the balance of the "termination compensation."

The landlords stated that they were entitled to loss of rent revenue for 2 months as they were unable to sell the residential property for that period of time.

The landlords submitted that on July 18, 2014, the tenants verbally informed the landlords that they were leaving the rental unit by August 31, 2014, thereby violating the original fixed term agreement. On July 23, 2014, the tenants willingly signed the mutual

agreement to end the tenancy the landlords had prepared, which made clear the tenants were agreeing to allow the landlords to retain their security deposit, according to the landlords' submission.

The landlords submitted further that as the tenants broke the terms of the mutual agreement to end the tenancy by not maintaining the yard, removing an appliance, and causing damage to a counter top, they, the landlords are entitled to loss of rental income for September and October 2014.

In response to my question, the landlord confirmed no attempts were made after the tenants vacated to obtain new tenants, as the property was for sale.

Analysis

Tenants' application-

In determining the tenants' application, I must first consider the landlords' argument that they were entitled to retain the tenants' security deposit due to one of the clauses, or terms, in the mutual agreement to end the tenancy.

In this case, the landlords chose use part of the standard mutual agreement to end a tenancy RTB form, and to draft and add 15 additional terms, making certain requirements of the tenants.

The clause the landlords relied upon to assert that they were entitled to keep the tenants' security deposit, the clause, as mentioned herein, states that the tenants will pay \$950.00 for an early termination of the tenancy and the landlords may retain the tenants' security deposit to cover that amount.

Under the legal principle *contra proferentum*, an ambiguous term in a contract will be construed against the party including the term in the contract, and in this case the landlords drafted the agreement.

In reviewing the mutual agreement to end the tenancy, and in all instances, I find the tenants and the landlords mutually agreed to end the tenancy on August 31, 2014, earlier than the fixed term set out in the written tenancy agreement, that the tenants vacated the rental unit on that date, and the tenancy ended on August 31, 2014. Section 44(1)(c) of the Act provides that a tenancy will end in the case of the parties agreeing in writing that the tenancy ends. I find that to be the case here and the tenancy ended pursuant to the mutual agreement, which I find supersedes the earlier written tenancy agreement.

The tenants argued that as they vacated the rental unit on the mutually agreed upon date, they did not vacate the rental unit early, and were not subject to relinquishing their rights to their security deposit. I accept this argument. As the mutual agreement ended the tenancy on August 31, 2014, and the tenants vacated by that date, I find the

tenancy did not end early. I do not accept the landlords' argument that this term was in contemplation of an early end to the original fixed term in the written tenancy agreement as this was not made clear by the language, in my mind, and I found this term to be ambiguous, construed in favour of the tenants.

Due to the above, I find the landlords did not have written authority to retain the tenants' security deposit.

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 to retain the deposit within 15 days 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.

In the case before me, the tenants submitted and the landlords confirmed that the landlords were provided the tenants' written forwarding address on July 23, 2014 and again on August 31, 2014. As the tenancy ended on August 31, 2014, by mutual agreement, the landlords had until September 15, 2014, to file an application for dispute resolution claiming against the tenants' security deposit or to return the security deposit in full; however, the landlords did not return the tenants' security deposit or file their application for dispute resolution until March 27, 2015.

I therefore grant the tenants' application for a return of their security deposit, doubled.

I find merit with the tenant's application, and I therefore grant them a monetary award of \$1850.00, comprised of their security deposit of \$900.00, doubled to \$1800.00, and for recovery of the filing fee paid for this application of \$50.00.

Landlords' application-

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 of their actions or neglect, 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.

In this case, as the tenancy ended on August 31, 2014, by mutual agreement, and the tenants did vacate by that date, there is no longer a remedy available in law or in equity to the landlords for the payment of future loss of rental income. The tenants' obligation to pay rent ended on August 31, 2014.

I therefore dismiss the landlords' application, without leave to reapply.

Conclusion

The tenants' application for monetary compensation is granted as I have granted them a monetary award of \$1850.00. As such, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1850.00, which is enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay, the order may be served upon the landlords and may be 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.

The landlord's application is dismissed without leave to reapply.

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: April 26, 2015

Residential Tenancy Branch

