



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary award. The hearing was conducted by conference call. The tenants and the landlord's representative, acting as agent for the landlords, called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award, including the return of their security deposit?

Background and Evidence

The rental unit is a laneway house in Vancouver. In May the tenants responded to an internet advertisement and viewed the house. When they viewed the house interior painting and finishing work was still underway. On May 7, 2015 they signed a tenancy agreement and agreed to rent the house for a fixed term commencing May 15, 2015 at a monthly rent of \$1,800.00. On May 11, 2015 the tenants gave the landlord a \$900.00 security deposit as well as a \$900.00 payment for the first half month's rent. The tenants testified that the unit was not ready for occupation on May 15th, but the landlord assured them that the work would be complete by May 18th and the house would be professionally cleaned. The tenants said they checked on May 19th and the rental unit was still not finished. They attempted to move in on May 21st, but the tenants said the unit was still not complete and clean.

The tenants said that when they reported the circumstances to the landlords, they became verbally hostile. At this point the landlords said that if the tenants no longer wanted the unit they would refund the tenants' money. The tenants referred to a text message sent by the landlord on May 22, 2015. The message said:

Hello (name of tenant) It is up to you guys if you want to rent the place or not, it is fine with us even if you do not want we will refund your money. I did not like the attitude (name of tenant) was showing.

The tenants responded by text message several hours later; they said:

Hi (name of landlord), after much discussion we decided that we will not take the place. I'm sorry for any hard feelings. I can come to (name of landlord)'s office on Monday to pick up the check for \$1800 and drop off the key. Please let me know if this will work.

The landlord replied by text message. She said in part that:

It is entirely up to you guys as I said before....anyway it is your choice, whatever you decide and it is your decision, it is ok with us both ways, but please let us know now, thanks

The tenant responded:

Ok thanks (name of landlord). We will just take our money back and return the key on Monday morning. Sorry things did not work out.

The landlords then changed their position. The landlord replied saying:

(Name of tenant) I talked to my husband, he is not agreeing, so it is ok if you guys move to the house, Thanks (Name of landlord).

The tenants testified that they returned to the rental unit on May 23rd and found that it was still not clean. They submitted photographs of the rental unit taken on May 23rd. They said that the picture showed that it was still not clean and there was a layer of drywall dust on most surfaces, as well as larger pieces of drywall on the floors in several locations.

According to the tenants the landlords said that they would only return the security deposit if they found a new tenant to occupy the unit by June 1st. The tenants said the landlord then advertised the unit for rent at a monthly amount of \$2,000.00. The tenants' position is that they were entitled to rescind the agreement to rent the unit because it was not ready when promised and because the relationship with the landlord became abusive and hostile. The tenants claimed that the landlord should be bound by the agreement to cancel the tenancy agreement and return the rent and deposit.

The landlord's agent denied that the rental unit was not ready for occupancy when the tenants intended to move in on May 21st. She submitted that the landlord was not bound by the text message offering to return the rent and deposit payment because the landlord had not approved his wife's statement and it was later withdrawn

Analysis

I accept the tenants' evidence that the rental unit was not ready for occupancy on May 15, 2015 and that it was still not ready for move-in on May 19th when the tenants attempted to move in.

I find that the landlords are bound by the offer made on May 22, 2015, offering to allow the tenants to withdraw from the tenancy agreement and to refund the rent and deposit paid. By that time the relationship between the parties had become acrimonious. The tenants accepted the offer before it was withdrawn and the landlord who made the offer was one of two landlords named in the tenancy agreement; I find that she had the necessary authority to make the offer. The tenants twice communicated their decision to withdraw from the tenancy and receive a refund of the rent and deposit, before the landlord purported to withdraw it. I find that the tenants are entitled to the refund of their rent payment and security deposit as claimed.

Conclusion

I allow the tenants claim in the amount of \$1,800.00. They are entitled to recover the \$50.00 filing fee for their application, for a total award of \$1,850.00 and I grant the tenants an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

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 11, 2015

Residential Tenancy Branch

