



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MONDELIVING INTERNATIONAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This matter dealt with an application by the Tenants for the return of double the security deposit and compensation for loss or damage under the Act, regulations or the Tenancy agreement.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 1, 2015. Based on the evidence of the Tenants, 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 the Landlord and the Tenants in attendance.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on April 10, 2015 as a fixed term tenancy with an expiry date of April 30, 2016. Rent was \$3,407.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,703.50 on April 10, 2015. The Tenants said they also paid the first and last month’s rent in the amount of \$6, 814.00 in April, 2015 as the Landlord required this as they were considered higher risk tenants. Further the Tenants thought a move in condition inspection report may have been done but they did not receive a copy and no move out inspection report was completed. The Landlord said a move in condition inspection report was completed but not submitted in the Landlord’s evidence package. As well the Landlord said they believe that the Tenants abandoned the property so they are not required to do a move out conditions inspection report.

The Tenants said they have applied for double their security deposit to be returned as the Landlord received their forwarding address on September 16, 2015 and he has not returned the security deposit to date. The Tenant said they thought they submitted an email to the RTB with the forwarding address on it but the Arbitrator said that email was not received by the RTB.

Further the Tenants said they told the Landlord in June, 2015 that they were moving out of the rental unit in mid June 2015. The Tenant said they moved out on June 16, but they understood they would have to pay the rent until the rental unit had a new tenant in it. The Tenants said they paid the June, 2015 rent, the July 2015 rent and the August, 2015 rent. The Tenants continued to say the Landlord emailed them and indicated that they had found a new tenant and the new tenants were moving into the rental unit on August 24, 2015. The Tenants said the Landlord said they did not have to pay any more rent because the Landlord had a new tenant moving in. Consequently the Tenants are now requesting to have the last month rent or rent deposit in the amount of \$3,407.00 paid in April, 2015 returned to them as they paid the August, 2015 rent as agreed.

The Tenants said they are requesting double the security deposit in the amount of \$3,407.00 and the rent deposit or extra month's rent paid in the amount of \$3,407.00 for a total claim of \$6,814.00. The Tenants continued to say they understood they were responsible for the rent until the unit was re-rented and they were prepared to pay the rent until that happened. The Tenants said they did not live in the unit from June 16, 2015 to August 24, 2015 but they paid the rent for that time period. August 24, 2015 the unit was rented to new tenants. At that point they were told by the Landlord their responsibilities had ended.

The Landlord said the Tenants breached the fixed term tenancy agreement and abandoned the rental unit so the Landlord said they were not obliged to do a move out condition inspection report. As well they retained the Tenants' extra month's rent or rent deposit and the Tenants' security deposit as compensation for the breach of the tenancy agreement and to cover costs of re-renting the rental unit.

The Landlord and his Counsel both indicated they felt very strongly that the Tenants breached the tenancy agreement by moving out prior to the expiry date.

The Landlord was questioned if he had applied to retain the Tenants security deposit or the extra month's rent. The Landlord said he did not make any applications but he would like to do so now in this hearing. The Landlord was advised of how to make a proper application.

Analysis

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;

(b) 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;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy

agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

In this situation the Tenant said the Landlord agreed to end the tenancy on August 24, 2015 in an email stating the Landlord had rented the unit to new tenants; therefore the Tenants obligations to the tenancy had ended.

The Landlord said the Tenants abandon the rental unit which was a breach of the tenancy agreement and the Landlord was forced to mitigate their potential losses by renting the unit to new tenants.

The Landlord said they rented the unit to new tenants on August 26, 2015 and that they had received the August, 2015 rent payment from the Tenants at the beginning of August, 2015. Therefore the Landlords did not experience a rental loss. The Landlords were aware the Tenants wanted to move out of the unit from emails sent to the Landlord in the middle of June, 2015. The Tenants said they told the Landlord that they would pay the rent until a new tenant was found. Given this information I find the Tenants did not abandon the rent unit as they had paid the rent up to September 1, 2015. As well the Tenants did not breach the tenancy agreement as they paid the rent as agreed up to the time the Landlord signed a new tenancy agreement with a new tenant. I find that when the Landlords accepted new tenants and signed a new tenancy agreement with the new tenants the Landlord accepted the end of the tenancy with the Tenants. I find the Tenants' tenancy end on August 24, 2015 with the signing of the new tenancy agreement for the rental unit. A Landlord cannot have two separate tenancy agreements on the same rental unit. Although there is not a written mutual agreement to end tenancy both parties acted in full knowledge of the other parties actions and both parties agreed to allow the rental unit to be rented to new tenants. I find the intent of the both the Landlords and Tenants actions was to end the Tenancy as soon as a new tenants were found which happened on August 24, 2015. Further I find the Landlord had no obligation to find new tenants but the Landlord acted in good faith to mitigate any losses for both parties. The Tenants also acted in good faith as they paid the rent when due even though they were not living in the rental unit. I find this situation is a verbal agreement to end a tenancy.

The Landlord says the Tenants breached the tenancy agreement by ending the tenancy early, but the Landlord has not suffered a loss due to the new tenants moving in. Therefore the Landlord has no grounds to retain the extra rent or rent deposit paid by the Tenants at the start of the tenancy as protection for the Landlord in case of unpaid rent. I find the Landlord has not made an application to retain the rent deposit or extra rent paid and the Landlord has not shown any grounds to show there is unpaid rent; therefore I find that the Landlord has no grounds to retain the rent deposit paid by the Tenants. Further the Tenants have shown they paid the rent due and the Landlord has not experience a loss from unpaid rent; therefore the Tenants have established grounds for the return of their rent deposit. I order the Landlord to return the Tenants' rent deposit of \$3,407.00 forth with.

With regard to the Tenants security deposit section 38 says the Tenants must give the Landlord their forwarding address in writing in order to have their security deposit returned. The Tenants said they gave the Landlord their forwarding address on September 16, 2015, but the Tenants have not provided and corroborative proof that this actually happened. The Tenants did not provide a copy of the email they sent to the Landlord so the claim is unproven. Consequently, I find the Tenants will have to serve the Landlord with their forwarding address in writing and then the Landlord will have 15 days to return the security deposit or to make an application to retain the security deposit. If the Landlord does not do either of these two things the Tenants are at leave to make an application for the return of the security deposit or double the security deposit.

Conclusion

Pursuant to sections 67 of the Act, I grant a Monetary Order for \$3,407.00 to the Tenants. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: April 12, 2016

Residential Tenancy Branch