



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover double the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this fixed term tenancy started on April 01, 2015 ending on March 31, 2016 with the option of continuing as a month to month tenancy. Rent for this unit was \$3,250.00 per month. The tenants testified that they paid a security deposit of \$1,706.25. The landlord testified that the security deposit paid was \$1,625.00. The parties attended a move in and a move out condition inspection of the property. The tenancy ended on April 30, 2016 and the tenants provided a forwarding address in writing on April 30, 2016.

The tenant TG gave testimony on behalf of the tenants and testified that they paid a security deposit to the landlord's agent of \$1,706.25 and the first month's rent they were asked to pay \$3,168.75. The tenant testified that she queried these amounts with the landlord's agent but was told to provide two bank drafts for these amount one to the landlord and one to the landlord's agent. The tenants have provided a copy of one of the bank drafts for \$1,706.25 in documentary evidence.

TG testified that at on May 18, 2016 the landlord returned \$1,625.00 of the security deposit paid and therefore as the landlord did not file an application to keep the balance of the security deposit paid, the tenants seeks to recover double the security deposit less the amount returned to them to a total amount of \$1,787.50.

TG testified that the landlord listed the rental unit for sale on September 10, 2015. On February 24, 2016 the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of the Property. The Notice indicated that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. TG testified that the property was actually sold on April 01, 2016 and referred to the listing document provided in their documentary evidence confirming this sale. TG testified that during the move out inspection the landlord also informed TG that the unit had been sold.

TG referred to their documentary evidence showing the email correspondence between the parties concerning viewings of the rental unit, agreements made concerning viewings and one email from the landlord confirmed that the unit was sold and all conditions of sale had been met except the final inspection which the landlord was arranging to take place on April 07, 2016 with the purchaser and the building inspector.

TG testified that as the landlord clearly had no intention of occupying the rental unit when he issued the Two Month Notice and it was always his intention to sell the unit, then the tenants seek compensation equivalent to two months' rent to an amount of \$6,500.00.

The landlord testified that regarding the security deposit; because he had an agent dealing with this rental the landlord had to pay the agent half a month's rent plus tax for his service. When the agent asked the tenants to provide two bank drafts one was for \$1,706.25 which was the amount the landlord owed the agent for his services. This bank draft went to his agent. The balance went to the landlord for the rent. The rent was \$3,250.00 the security deposit was \$1,625.00 this equal \$4,875.00 which was the exact amount paid by the tenants for the first month's rent and the security deposit. Therefore the landlord did return the tenants' security deposit of \$1,625.00 to the tenants on the 15th day he had to return it. As it was sent by mail the tenants did not receive it until days later. The landlord therefore disputed the tenants' claim to recover the doubling portion and any balance of the security deposit.

The landlord disputed the tenant's application to recover compensation of two months' rent. The landlord testified that when he served the Notice he was going to occupy the rental unit. The decision to sell the unit was made earlier in the tenancy but the landlord did not give the go ahead to list the unit until September, 2015. The bank was going to foreclose on the unit so the landlord had to list it for sale. The tenants were informed of the landlord's decision to sell the unit and they were offered a free month's rent to make it easy to show the unit.

The landlord testified that later he recognised that he had to give the tenants a Two Month Notice to End Tenancy and that they would receive a free month's rent. The tenants were actually given three months' notice. The tenants did not have to pay their last month's rent and they also had an agreement with the landlord that the landlord would pay them \$100.00 for each showing of the unit. The tenants therefore received another \$200.00 as the unit was shown twice.

The landlord agreed that the unit was sold to a family he knew and the sale completed on May 09, 2016. The landlord does not feel that the tenants are entitled to receive compensation of a further two months' rent.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenants' claim for double the security deposit; I have considered the payments made by the tenants at the start of the tenancy. The rent was agreed at \$3,250.00 a month, the security deposit was half a month's rent or \$1,625.00. The tenants paid two bank drafts to a total amount of \$4,875.00. As this is the amount of the rent and the security deposit combined, however the landlord's agent wanted the money paid is not relevant. The fact remains that the tenants paid this amount and therefore I find the security deposit paid was \$1,625.00 not \$1,706.25. As the landlord returned this amount to the tenants and the cheque shows it was written on May 15, 2016 then I find the landlord did return the security deposit as required under s. 38 of the *Act*. The tenants' claim to recover \$1,787.50 is therefore dismissed.

With regard to the tenants' claim to recover \$6,500.00 in compensation; I refer the parties to s. 51 of the *Act* which states:

51 (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.

The reason provided on the Two Month Notice was that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. The rental unit was in fact sold on April 01, 2016 but had previously been listed for sale since September, 2015. I therefore find it was not the intention of the landlord to occupy the rental but rather to sell the rental unit. As such the rental unit was not used for the stated purpose as provided on the Two Month Notice. Consequently, in accordance to s. 51(2)(b) of the *Act* the tenants are entitled to recover compensation from the landlord to an amount equivalent to two months' rent payable under the

tenancy agreement . The tenants will therefore receive a Monetary Award pursuant to s. 67 of the *Act* for the amount of **\$6,500.00**.

As the tenants' application has some merit the tenants are entitled to recover their filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$6,600.00. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: November 22, 2016

Residential Tenancy Branch