



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, MNR, FF

Introduction

This was a cross-application hearing.

On June 18, 2016 the tenants applied requesting an order the landlord comply with the Act, return the pet and security deposits and to recover the filing fee cost from the landlord.

On July 12, 2016 the landlord applied requesting compensation for unpaid rent and to recover the filing fee cost from the tenants.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing and to present affirmed oral testimony and to make submissions during the hearing.

The only written submission was proof of service supplied by the landlord.

Issue(s) to be Decided

Are the tenants entitled to return of the pet and security deposits in the sum of \$4,000.00?

Is the landlord entitled to compensation in the sum of \$2,500.00 for unpaid May 2016 rent?

Background and Evidence

The tenancy commenced in May 2014. Rent was \$2,500.00 due on the 1st day of each month. The landlord said he could not recall receiving pet and security deposits in the sum of \$1,000.00 each. The tenants said that they made an electronic transfer to the landlord in the sum of \$2,000.00 in April. The tenants sent a copy of that transfer to the landlord, as proof payment had been made. The landlord did not dispute this, but said he could not recall.

The landlord said the tenancy was a two year fixed term that ended effective April 30, 2016 at which point the tenants were to vacate. The tenants agreed that they were given permission to remain in the rental unit until May 31, 2016, at which point they vacated.

The tenants did not pay \$2,500.00 rent due in May 2016 as they believed they were entitled to compensation as the result of the landlords' intent to occupy the unit. The tenants confirmed that a Notice ending tenancy for landlords' use of the property was not issued.

The landlord has claimed unpaid May 2016 rent in the sum of \$2,500.00.

There was not a move-in inspection scheduled by the landlord. The parties met on May 31, 2016 and walked through the unit. The tenants said they gave the landlord a piece of paper with the forwarding address. The landlord recalls receiving an address but could not say when it was given. The tenants recalled the address was written on a piece of yellow paper. The only other time the tenants saw the landlord was on June 1, 2016, when they returned some items to the rental property.

The landlord has not claimed against the deposits and has not returned either deposit to the tenants.

Analysis

There is an absence of evidence that the tenants were entitled to compensation for the last month of the tenancy. A two month Notice ending tenancy for landlords' use of the property was not issued. Therefore, as the tenants have confirmed rent was not paid I find that the landlord entitled to compensation in the sum of \$2,500.00 for unpaid May 2016 rent.

The landlord has confirmed receipt of the tenants' written forwarding address. Based on the testimony of the tenants I find on the balance of probabilities that the address was given on May 31, 2016 when the parties met to walk through the rental property. The only other date that address could have been given was on June 1, 2016; the last time the tenants met with the landlord.

Sec 38(1) of the Act provides:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord has confirmed they did not comply with section 38(1) of the Act by claiming against the deposits or returning the deposits within 15 days of May 31, 2016.

Section 38(6) of the Act provides:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

*(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.***

(Emphasis added)

Therefore, I find pursuant to section 38(6) of the Act that the tenants are entitled to return of double the security and pet deposits in the sum of \$4,000.00.

As each application has merit I find that the filing fees are set off against the other.

I find that the landlord is entitled to retain the tenant's security and pet deposit in the amount of \$2,500.00, in satisfaction of the monetary claim.

Based on these determinations I grant the tenants a monetary order for the balance of \$1,500.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to compensation for unpaid rent in the sum of \$2,500.00.

The tenants are entitled to return of double the pet and security deposits in the sum of \$4,000.00.

The landlord may retain \$2,500.00 from the deposits in satisfaction of the claim.

Filing fees are set off against the other.

This decision is final and binding and 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 16, 2016

Residential Tenancy Branch