



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNSD (Landlord's application)
 MNSD, FF (Tenant's Application)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution they sought monetary compensation from the Tenant for unpaid rent, authority to retain the security deposit and recovery of the filing fee. In the Tenants' Application for Dispute Resolution the Tenants requested the return of double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference on November 21, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. What should happen with the Tenants' security deposit?

3. Should either party recover the filing fee?

Background and Evidence

The Landlord's representative, A.L. testified as follows. He stated that the tenancy between the Tenants and the former Landlord, G.P.M., began April 1, 2017. Monthly rent was payable in the amount of \$975.00 and the Tenants paid a security deposit in the amount of \$487.50.

A.L. confirmed that the Landlord performed a move in and move out condition inspection report (a copy of which was provided in evidence).

In the within action, the Landlord originally sought the sum of \$1,462.50; however, at the hearing A.L. confirmed the Landlord sought the sum of \$617.50 representing unpaid rent for June 1-19, 2017.

A.L. stated that C.P.M., the Landlord named on the Application for Dispute Resolution, took over management of the rental property from G.P.M. on May 31, 2017 when the property was sold; introduced in evidence was a copy of the Land Title Search confirming same.

Also introduced in evidence was a notice to the residents of the rental building, dated May 10, 2017, confirming that C.P.M., was to take over management of the rental property as of May 31, 2017.

A.L. stated that they received written notice from the Tenants that they would vacate the rental unit by May 31, 2017. A.L. further stated that they accepted the Tenants' notice but did not agree this would be without penalty.

A.L. stated that he had no knowledge of any prior agreement with the previous Landlord, G.P.M., and the Tenants, until they received the Tenants' evidence package.

A.L. confirmed that the property was re-rented as of June 19, 2017 such that the loss of rent is \$617.50.

In response to the Landlord's claim, and in support of the Tenants' claims, the Tenant, G.C., testified as follows.

He stated that the tenancy began April 1, 2017. He confirmed that the second night they resided in the rental unit they became aware of a bed bug and cockroach infestation. He confirmed that he brought this to the Landlord's attention immediately. He stated that there were five separate treatment attempts by the Landlord. He further stated that during treatment they had to move all of their things into the kitchen and cover all of their belongings. He said that despite these attempts, this did not resolve the problem and this was the reason why they asked for an early termination of their tenancy. He claimed that neither he, nor his mother could sleep more than five hours without getting bit and that his mother moved out a month early.

The Tenant stated that he spoke to the G.P.M.'s resident manager, M.S., about moving out early as the rental unit became in habitable. He stated that they spoke about this issue almost every day, but that on May 10, 2017, he asked M.S. if they could move out at the end of May 2017. Initially she indicated she could not agree unless she obtained permission from F.M. (the property manager), but on May 15, 2017, M.S. confirmed that she had spoken to F.M. who confirmed that they could move out as of May 31, 2017 without any financial penalty.

G.C. stated that he did not receive written confirmation of this agreement, as F.M. told him not to worry about it due to their "predicament".

Introduced in evidence was a copy of an email from F.M., confirming that G.P.M. had agreed the Tenants could move out at the end of May 2017 without being responsible for the June 2017 rent. For greater clarity, I reproduce that email as follows:

I am hereby confirming that we approved your short notice received at the beginning of May for ending your tenancy on May 31st without charging you the June rent – hopefully this note will help you with the new landlord and good luck!

G.C. confirmed that they moved from the rental unit on May 31, 2017 at 1:00 p.m.

In reply, the agent for the Landlord's agent submitted as follows:

- The Landlord informed the Tenant that on or after May 31, 2017 all communication should be with the new Landlord.
- The agreement between G.M. and the Tenants was not in writing.
- Had there been an agreement, the previous Landlord could have indicated as such on the move out condition inspection.

- G.M. had no authority to bind the Landlord on June 19, 2017.
- The rental unit was inspected by a dog trained to detect bedbugs and no activity was found.
- The unit was treated on May 23, 2017 and June 6, 2017 as evidenced by invoices provided by the Landlord.

Analysis

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

I find that the Tenants and the previous Landlord, G.P.M, entered into a binding verbal agreement the terms of which were that the Tenants could vacate the rental unit by May 31, 2017 and would not be responsible for any rent from that date forward. I accept the Tenants' evidence that this agreement was reached due to the bed bug and cockroach infestation in the rental unit. G.P.M. gave the Tenants permission to move out by May 31, 2017 and further agreed there would be no financial consequence for not giving the required 30 days notice.

While A.L. testified that there were no issues with the rental unit; evidence submitted by the new Landlord, C.P.M.S., confirms that treatments occurred after the tenancy ended.

Although the agreement between G.P.M. and the Tenants was not in writing, it was confirmed by F.M., on behalf of G.P.M., by email dated June 19, 2017. She did not enter into a *new* agreement on June 19, 2017, rather she confirmed a *pre-existing* agreement. At the time she agreed the Tenants could move out early, she had legal authority to do so, and as such, I find the new Landlords are bound by this agreement. As such, I find the Tenants are not liable for any loss of rent for June 2017. I therefore dismiss the Landlord's claim for related compensation.

A security deposit is held in trust for the Tenants. The new Landlord, C.P.M.S., became trustee of these funds when taking over management of the building on May 31, 2017.

C.P.M.S. made their application for dispute resolution on June 13, 2017 such that they complied with the strict 15 day time limit in section 38(1) of the *Act*; consequently, I decline the Tenants' request that I double the security deposit.

Conclusion

The Tenants are entitled to the sum of \$587.50 representing return of their security deposit in addition to the \$100.00 filing fee. The Tenants are granted a Monetary Order in the amount of **\$587.50**. This Order must be served on the Landlord and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

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 1, 2017

Residential Tenancy Branch