



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenants in the amount of \$1,700.00, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on December 12, 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. Are the Landlords entitled to retain the Tenant's security deposit?
2. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord's agent, V.D., testified as follows. She stated that the Tenant viewed the rental unit on June 2, 2017. The Tenant then came back to the agent's office and signed the tenancy agreement on June 9, 2017 as well as providing \$800.00 as a security deposit, \$800.00 as a pet damage deposit, and half a month's rent in the total amount of \$2,400.00.

The residential tenancy agreement was introduced in evidence which provided as follows:

2. LENGTH OF TENANCY (please fill in the dates and times in the spaces provided)			
This tenancy starts on:			
1	July	2017	<i>EARLY POSSESSION TAKEN JUNE 15, 2017. PRO-RATED RENT IN THE AMOUNT OF \$800 IS DUE AND PAYABLE ON OR BEFORE JUNE 15, 2017.</i>
day	month	year	
Length of tenancy: (please check a or b or c and provide additional information as needed)			
This tenancy is:			

V.D. stated that the Tenant did not move into the rental unit as agreed. V.D. stated that the Tenant informed the Landlord on June 19, 2017 that she would not be moving into the rental unit. V.D. stated that to her knowledge the reason the Tenant did not move in is that the Tenant's spouse, D.D., measured the rental unit and discovered that their couches would not fit through the door.

V.D. stated that the rental unit was re-rented as of July 1, 2017. In the within hearing the Landlord sought the sum of \$1,700.00 including compensation for rent for June 15-30, 2017, the "lease break fee" representing a forfeiture of the security deposit, as well as the filing fee. V.D. stated that the Landlord relied on the strict wording of the Addendum to the tenancy agreement in terms of claiming the security deposit; specifically, clause 16 of the Addendum provides as follows:

- * 16. The Tenant understands and agrees that the deposit to hold the house shall be forfeited to the Landlord if the Tenant does not move in. The Tenant further agrees that the security deposit may be forfeited to the Landlord, to cover the cost of placing a new tenant, if the Tenant vacates prior to the end of their lease, or if they fail to give proper written notice. The Tenant may also be responsible for any rent while the house is vacant.

V.D. confirmed that the pet damage deposit was returned to the Tenant on June 29, 2017 such that the Landlord holds the \$800.00 security deposit and \$800.00 for the June 15-30, 2017 rent.

The Tenant responded to the Landlord's submissions as follows. She confirmed that she signed the tenancy agreement on June 8, 2017 and paid the security deposit and pet damage deposit in cash on June 9, 2017 as well as half a month's rent. The Tenant confirmed that the Landlord returned her pet damage deposit in the amount of \$800.00

however they continue to hold \$1,600.00 representing the security deposit and the \$800.00 for the June 15-30, 2017 rent.

The Tenant confirmed that she signed the addendum to the tenancy agreement at the same time she signed the tenancy agreement.

The Tenant stated that she opposes the Landlord's claim. She stated that shortly after she signed the tenancy agreement she contacted the Landlord's agent about her couches not fitting into the doorways. She stated that she told V.D. on June 9, 2017 right after she paid the deposits that she observed that the doorways were narrow and did not believe that her couches would fit. She stated that she called V.D. in the early evening and informed her that she did not wish to continue with the tenancy. She claimed that her daughter also witnessed this telephone call.

The Tenant then testified that her husband measured the door on June 10 or June 12, 2017 and confirmed their couches would not fit through the door.

The Tenant stated that between June 9, 2017 and June 19, 2017 she contacted V.D. on numerous occasions to inform her that she did not wish to continue with the tenancy. On June 19, 2017 she gave V.D. written Notice that she did not wish to proceed with the tenancy.

The Tenant stated that the Landlord began advertising the rental unit as of June 19, 2017 and to her knowledge it was rented the next day.

The Tenant stated that to her knowledge the Landlord made no attempts to rent the rental unit between June 9 and June 19. She also said that she offered to help V.D. re-rent the rental unit as early as June 9, 2017 and V.D. refused.

The Tenant further stated that the rental unit was not ready for occupation as the renovation was not complete. She stated that the blinds had not been installed, some of the floor in a small bedroom was not installed and the unit had yet to be painted. The Tenant stated that the renovations were not completed until June 13, 2017. She stated that on June 13, 2017 V.D. contacted her to tell her that the rental unit was completed and she wished to meet to give them the keys. The Tenant stated that she could not meet with the Landlord's agent on that date and informed her accordingly. She stated that she also felt bound by the contract as V.D. kept saying "you signed a contract, business is business".

In reply to the Tenant's response, V.D. stated that on June 12, 2017 the Tenant informed her that her couches would not fit through the door. She confirmed that she did not start advertising until June 19, 2017 because she had to wait for written notice that the Tenant was not moving in.

V.D. stated that the new tenants were not able to move in early, although they paid rent from July 1, 2017.

Analysis

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

Section 16 of the *Residential Tenancy Act* provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In the case before me the parties entered into the tenancy agreement on June 8, 2017.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

While the Tenant may have verbally informed the Landlord's agent that she did not wish to proceed with the tenancy, she did not give written notice until June 19, 2017. Accordingly, and pursuant to sections 45 and 52 the effective date of her notice is July 31, 2017.

I accept the Landlord's evidence that the rental unit was re-rented as of July 1, 2017. Accordingly, I find the Tenant is responsible for paying \$800.00 in rent from June 15 to June 30, 2017. As this amount has already been paid, I find the Landlord may retain those funds.

As noted during the hearing, the parties cannot contract out of the *Residential Tenancy Act*. A "liquidated damages clause", or "lease break fee", which presumptively deals with the Tenant's security deposit by providing for an automatic forfeiture, is unenforceable as deposits must be dealt with in accordance with the *Act*. Further, section 20(e) of the *Act* reads as follows:

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

- ... (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

I therefore find paragraph 16 of the Addendum to be of no force and effect. Consequently I find the Landlord is not entitled to retain the Tenant's security deposit of \$800.00 and must return those funds to the Tenant.

Having been only partially successful I find the Landlord is entitled to recovery of one half of the filing fee in the amount of \$50.00. This amount is to be offset against the \$800.00 awarded to the Tenants such that the Landlord must return the sum of \$750.00.

Conclusion

The Landlord's claim for rent for June 15-30, 2017 in the amount of \$800.00 is granted. As the Tenant pre-paid this amount, the Landlord may retain the funds.

The Landlord's claim to retain the Tenant's \$800.00 security deposit is dismissed pursuant to section 20(e) of the *Act*. The Tenant is entitled to return of these funds.

The Landlord is entitled to recovery of one half of the filing fee in the amount of \$50.00.

The \$50.00 awarded to the Landlord is to be deducted from the \$800.00 awarded to the Tenant such that the Tenant is entitled to a Monetary Order in the amount of **\$750.00**. The Order must be served on the Landlord by the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: January 2, 2018

Residential Tenancy Branch