



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD CNL OLC

Introduction

This hearing was convened pursuant to an Application for Dispute Resolution submitted by the Tenants, dated July 5, 2017 (the “Application”). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit;
- an order cancelling a notice to end tenancy for landlord’s use of property; and
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement.

The Residential Tenancy Branch provided the parties with a New Notice of Adjourned Hearing, dated January 25, 2018. Accordingly, pursuant to section 71 of the *Act*, I find the parties were sufficiently served with notice of the date and time of the reconvened hearing on April 9, 2018. Although the Tenants attended the hearing in person and provided affirmed testimony, the Landlords did not attend the reconvened hearing.

Further, the Tenants testified that Landlords were served with documentary evidence upon which they intended to rely by leaving a copy at the Landlords’ address on March 29, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Landlords are deemed to have received the Tenants’ documentary evidence on June 1, 2018.

The Tenants were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
3. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement?
4. Are the Tenants entitled to an order granting recovery of filing fee?

Background and Evidence

The Tenants submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the tenancy began on October 15, 2016. The Tenants testified they vacated the rental unit on June 6, 2017. During the tenancy, rent in the amount of \$1,800.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$900.00, which was repaid to them. During the hearing, the Tenants confirmed they wished to withdraw this aspect of the Application.

The Tenants testified that the tenancy ended after they received a Two Month Notice to End Tenancy for Landlord's Use of Property on April 20, 2017 (the "Two Month Notice"). The Two Month Notice had an effective date of June 30, 2017. However, the Tenants chose to issue a 10 day notice and end the tenancy before the effective date of the Two Month Notice, pursuant to the *Act*. According to the Tenants, the 10 day notice was delivered to the Landlords' address on May 26, 2017. The Tenants confirmed they did not pay rent for the month of June 2017.

Analysis

Based on the unchallenged documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 51(1) of the *Act* provides that a tenant who receives a notice to end tenancy for 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". In addition, section 50(1) of the *Act* permits a tenant to end a tenancy before the effective date of the notice by providing the landlord with "at least 10 days written notice" and paying rent due to the effective date of the tenant's notice.

In this case, the effective date of the Two Month Notice was June 30, 2017. However, pursuant to section 50(1) of the *Act*, the Tenants elected to end the tenancy early and provided the Landlords with a 10 day notice to end the tenancy. The Tenants testified that the 10 day notice was delivered to the Landlords' address on May 26, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. Accordingly, I find the Landlords are deemed to have received the Tenants' notice to end the tenancy early on May 29, 2017. As a result, the earliest the tenancy could have ended was June 8, 2017 – 10 days after the notice is deemed to have been received by the Landlords.

After careful consideration of the Tenants' evidence and submissions, I find the Tenants are entitled to compensation in the amount of \$1,800.00, pursuant to section 51(1) of the *Act*. However, pursuant to section 50(1) of the *Act*, the Landlords are entitled to be compensated for the days the Tenants occupied the rental unit. As the earliest the tenancy could have ended was June 8, 2018, the Landlord is entitled to receive rent in the amount of \$480.00 for the period from June 1-8, 2017, inclusive ($(\$1,800.00 / 30) \times 8 \text{ days} = \480.00). Accordingly, I find the Tenants have established an entitlement to a monetary award of \$1,320.00 as compensation pursuant to section 51 of the *Act* ($\$1,800.00 - \$480.00 = \$1,320.00$). Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Tenants monetary order in the amount of \$1,420.00, which is comprised of \$1,320.00 as compensation pursuant to sections 50(1) and 51(1) of the *Act*, and \$100.00 in recovery of the filing fee.

With respect to the Tenants' advice that they received the security deposit from the Landlords and wished to withdraw this aspect of the Application, I accept the Tenants' withdrawal and have not considered this aspect of the Tenants' claim further.

Finally, as the tenancy ended when the Tenants vacated the rental unit, it has not been necessary for me to consider the Tenants' request for orders cancelling the Two Month Notice or that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,420.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 10, 2018

Residential Tenancy Branch