



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (Tenants' Application)
 MNDC, FF (Landlords' Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution filed on October 12, 2017 the Tenants sought return of double their deposits paid and recovery of the filing fee. In the Landlords' Application for Dispute Resolution filed on April 27, 2018 the Landlords sought monetary compensation for loss of rent and recovery of the filing fee.

The hearing of the cross applications was scheduled for teleconference at 1:00 p.m. on May 15, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to 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 *Residential Tenancy Branch 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 Tenants entitled to return of double the security deposit paid?
2. Are the Landlords entitled to monetary compensation for loss of rent?
3. Should either party recover the filing fee paid?

Background and Evidence

Introduced in evidence was a copy of the tenancy agreement which provided that this six month fixed term tenancy began September 1, 2017 and was to end on March 1, 2018. Monthly rent was payable in the amount of \$1,500.00. J.D. testified on behalf of the Tenants and stated that they paid a \$750.00 security deposit and a \$375.00 pet damage deposit for a total of \$1,125.00 in deposits paid.

The tenancy ended on September 30, 2017. J.D. stated that the tenancy ended because the rental unit was not suitable, as he is 6'3" and the rental unit is less than 6' tall. J.D. also stated that there were mice in the rental unit and the Landlords refused to address the mice issue going so far as to accuse the Tenants of bringing them in the unit. J.D. also stated that they were willing to stay until the rental unit was re-rented, and the Landlords asked them to leave right away.

J.D. stated that he did not believe the rental unit was re-rented but rather the Landlords had their son move in.

Introduced in evidence was a letter from the Tenants to the Landlords dated October 10, 2017 wherein the Tenants provided their forwarding address and asked for return of their security deposit funds. In that letter the Tenants also provide the Landlord with information relating to section 38 of the *Residential Tenancy Act* as well as the contact information for the Residential Tenancy Branch.

M.A. also testified on behalf of the Tenants. She stated that once J.D. spoke to the Landlord they felt like there would be no problem with them getting their money back. The issue arose when they didn't find someone to take the place when they expected to.

M.A. stated that when they discussed the end of the tenancy, the Landlords confirmed that as long as they were out by September 30, 2017 there would be no problem getting their deposit back.

On the Application for Dispute Resolution the Tenants confirmed that they seek double their \$1,125.00 deposits in the amount of \$2,250.00 in addition to the filing fee.

M.S. testified on behalf of the Landlords. He confirmed that he received the October 10, 2017 letter wherein the Tenants provided their forwarding address.

M.S. stated that they initially did not apply for dispute resolution as they did not have the money for the proceedings and they had difficulty getting all their documentation together.

M.S. confirmed that he had a talk with the Tenant J.D., on September 14, 2017, and J.D. stated that his back was killing him from the ceiling being so low. M.S. stated that it wouldn't be a problem if they moved out, as long as he had someone to move in right away.

M.S. further stated that they advertised the rental unit on social media, put a sign on the window of the house and also sent messages to their friends to try to find new renters.

M.S. confirmed that no one moved into the rental unit until November 1, 2017 and their new tenant is not related to them, despite the Tenant's claims. M.S. also stated that the monthly rent is \$1,350.00.

Analysis

The Tenants apply for return of double the deposits paid. Section 38 of the *Residential Tenancy Act* deals with such applications and provides as follows:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Tenants did not agree to the Landlords retaining any portion of their security and pet damage deposit.

I find that the Landlords received the Tenants' forwarding address in writing on October 10, 2017.

The Landlords failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security and pet damage deposit, as required under section 38(1) of the *Act*.

The security and pet damage deposit is held in trust for the Tenants by the Landlords. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the deposits. The Landlords failed to make such an application.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$2,250.00** comprised of double the security and pet damage deposit (2 x \$1,125.00).

The Landlords apply for loss of rent for the month of October 2017.

The evidence before me confirms the Tenants gave notice to end their tenancy on September 14, 2017; their intention was to move on September 30, 2017.

A tenant's notice to end tenancy is dealt with in section 45 of the *Residential Tenancy Act* and provides as follows:

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]*.

The Tenants stated that they moved from the rental unit because the ceiling was too low and there were issues with mice. Although not strenuously argued, they appear to be suggesting they should not be bound by the fixed term as the Landlord breached a material term of the tenancy agreement (as set out in section 45(3) above).

The height of the ceiling would have been apparent to the Tenants when viewing the rental unit and did not change during the tenancy; further, the Tenants are responsible for ensuring the rental unit is suitable when viewing it prior to signing the tenancy agreement.

With respect to the rodent infestation, I find that the Tenants have failed to prove the Landlords were negligent in dealing with this issue. Additionally, and as section 45(3) provides, the Tenants must give the Landlord written notice of any failure and must give the Landlord a reasonable period of time to correct any deficiencies, such as repairs, or rodent issues. In the case before me I find the Tenants did not give the Landlords a reasonable amount of time to address the mice issues, rather they opted to end their tenancy.

I therefore find the Tenants have failed to prove the Landlords breached a material term of the tenancy allowing them to end their tenancy pursuant to section 45(3).

I also find that the Landlords did not waive their entitlement to loss of rent when they accepted the Tenants' request to end the tenancy. The documentary evidence before me confirms the Landlords agreed they could move out and would return their deposits provided they were able to re-rent the unit immediately and therefore suffer no financial loss.

As this was a fixed term tenancy, the Tenants were liable for rent until the end of the tenancy, March 1, 2018. Fortunately the Landlords were able to mitigate their loss by re-renting the unit.

I accept the Landlords' evidence that they attempted to re-rent the unit by October 1, 2017 and were not able to do so until November 1, 2017. I therefore award the Landlords loss of rent for October 2017 in the amount of **\$1,500.00**.

The amount awarded to the Tenants (\$2,250.00) is to be offset against the amount awarded to the Landlords (\$1,500.00) such that the Tenants are entitled to monetary compensation in the amount of **\$750.00**.

Conclusion

The Tenants are awarded double their security deposit in the amount of **\$2,250.00**.

The Landlords are awarded compensation for loss of rent for October 2017 in the amount of **\$1,500.00**.

As both parties have been partially successful, I find they should bear the cost of their own filing fees.

The amounts are offset against the other such that the Tenants are entitled to a Monetary Order in the amount of **\$750.00**. This Order must be served on the Landlords 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: May 18, 2018

Residential Tenancy Branch