



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On June 15, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the return of their security deposit and a Monetary Order for compensation from the Landlord. The matter was set for a participatory hearing via conference call.

The Landlord, the Landlord’s Agent and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that the Landlord received the Tenant’s evidence and that the Landlord did not submit any evidence.

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

Should the Tenants receive a Monetary Order for the return of their security deposit, pursuant to Section 38 of the Act?

Should the Tenants receive a Monetary Order for compensation from the Landlord, pursuant to Section 51 of the Act?

Background and Evidence

The Tenants testified that their tenancy began in October of 2013 with a different landlord; however, they did not have a copy of the Tenancy Agreement. The Tenants’

rent started at \$700.00 a month and by the time their tenancy ended, the rent was \$800.00 a month. They stated that they paid \$350.00 as a security deposit and \$350.00 as a pet damage deposit at the beginning of their tenancy. They have not had their security deposit or their pet damage deposit returned by the current Landlord. The Tenants also acknowledged that they have no evidence to prove that they paid the security deposit or the pet damage deposit to the previous landlord.

The Landlord stated that he bought the rental property in 2017 and inherited the Tenants as tenants. The Landlord testified that he did not receive a copy of a Tenancy Agreement, a security deposit or a pet damage deposit from the previous Landlord.

The Landlord acknowledged that the Tenants moved out of the rental unit on May 31, 2018 as had been established by a previous Residential Tenancy Branch Settlement Agreement, dated April 25, 2018, and as a result of the Tenants disputing a Two-Month Notice to End Tenancy for Landlord's Use of Property, dated March 22, 2018 (related file noted on cover page of this Decision). The Landlord received a letter, dated May 31, 2018, from the Tenants that requested the return of their deposits and provided their forwarding address. The Landlord stated that the move-out inspection of the rental unit went well and that he would return any deposits to the Tenants if they were able to provide any proof that they had paid the deposits to the previous landlord.

The Tenants testified that the Settlement Agreement, dated April 25, 2018, set a move-out date for the Tenants as well as established that Section 51 of the Act was still applicable to this tenancy. The Tenants stated that the Landlord's reasons for ending the tenancy, as stated on page 2 of the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated March 22, 2018, (the "Notice") was that the Landlord had all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the unit in a manner that requires the rental unit to be vacant. The Tenants stated that they now live across the street from the rental unit and have not seen any renovations completed since they moved out of the rental unit and that the unit is currently rented out to new tenants.

The Tenants stated that the Landlord always intended to raise the rent for the rental unit and referred to a copy of a letter from the Landlord, dated January 20, 2018, where the Landlord said that the Tenants' lease was over and if they would like to continue on as a month-to-month tenancy that their rent would increase by \$400.00. The Tenants said the Landlord served the Notice to them on March 22, 2018, when they would not sign a new Tenancy Agreement with those terms. The Tenants provided a screen shot dated June 8, 2018, of a Craigslist ad that indicated the rental unit was available for rent on

July 1, 2018, for \$1400.00. The Tenants stated that the photos of the rental unit still showed that the unit had not been renovated.

The Landlord testified that the pictures in the ads were old and that the Landlord has permits in place with the city to tear down the rental property and rebuild. The Landlord then stated that they were currently waiting for the city to follow through with the permits to demolish the rental unit. The Landlord clarified that everything is filed with the city, but that they are waiting for the permits to proceed.

When questioned about renovations, the Landlord stated that they replaced some flooring and painted the walls of the rental unit in order to rent it out to tenants while they applied for the demolish permits.

Analysis

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days, and does not have the Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that they requested their \$350.00 security deposit and their \$350.00 pet damage deposit when they notified the Landlord of their forwarding address in the letter dated, May 31, 2018, in accordance with Section 38 of the Act. I also accept the Landlord's testimony that he would return the deposits if and when the Tenants could provide any evidence that they paid the deposits to the previous landlord. In this case, where the main point of conflict is whether the Tenants paid a security deposit or a pet damage deposit, I find that the Tenants failed to provide sufficient evidence to support their claim that they paid the deposits to the previous landlord. As such, I dismiss the Tenants' claim for the return of their security deposit and pet damage deposit with leave to reapply. For clarity, if the Tenants are able to gather some evidence that they paid the deposits at the beginning of their tenancy, they may again apply for Dispute Resolution and claim for the return of their deposits, in accordance with the Act.

Section 51 of the Act, (as of March 22, 2018 - the date the Notice was served) stated that if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable period after the effective date of the Notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the Tenancy Agreement.

Although the purpose of this Application is not to contest the validity of the Notice, I note that the Landlord indicated, by checking the stated purpose on page 2 of the Notice, that the end of the tenancy was because the Landlord had all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the unit in a manner that requires the rental unit to be vacant. I have to consider this when I contemplate whether the Landlord abided by Section 51 of the Act and actually accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice.

The Landlord ended the tenancy on May 31, 2018, based on their claim that they had all necessary permits and approvals required by law to demolish the rental unit. I accept the Landlord's testimony that, as of the date of this hearing, the Landlord has not demolished the rental unit, that they are still awaiting permits from the city and that, in the meantime, they have found new tenants for the rental unit. The Landlord did not provide any documentary evidence regarding the permits or that renovations had actually occurred. Based on this and the above evidence, I find that the Landlord has failed to provide sufficient evidence that he has accomplish the stated purpose for ending the tenancy within a reasonable period after May 31, 2018. As such, I find that the Landlord must pay the Tenants an amount that is the equivalent of double the monthly rent payable under the Tenancy Agreement, for a total of \$1,600.00, in accordance with Section 51 of the (pre-May 17, 2018) Act.

The Tenants' Application has merit and I find that the Tenants should be reimbursed for the filing fee in the amount of \$100.00.

Conclusion

I dismiss the Tenant's claim for the return of the security deposit and pet damage deposit with leave to reapply.

The Tenants have established a monetary claim in the amount of \$1,700.00, which includes \$1,600.00 as compensation and \$100.00 for the cost of the fee paid to file this Application for Dispute Resolution. In accordance with Section 67 of the Act, I grant the

Tenants a Monetary Order for the amount of \$1,700.00. 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.

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: September 19, 2018

Residential Tenancy Branch