



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant's for a monetary order for money owed, for an order for return of double the security deposit and pet damage deposit and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and procedural matter

This matter commenced on April 29, 2019, and was adjourned because the landlords evidence was not received from Service BC. The interim decision should be read in conjunction with this decision.

At the outset of the hearing, the tenants indicated the issue of the deposits have been dealt with in a hearing held on January 14, 2019 and that matter no longer needs to be considered.

Issue to be Decided

Are the tenants entitled to monetary order for money owed?

Background and Evidence

The tenancy began on September 2015. Current rent in the amount of \$1,040.00 was payable on the first of each month. A security deposit of \$600.00 and pet damage deposit was paid by the tenants. The tenancy ended on August 31, 2018.

The tenants testified that the landlord gave them an illegal rent increase in January 2018, in the amount of \$130.00. The tenants stated that this was not in writing and not in the proper form. The tenants stated they should be entitled to the return of the overpayment of rent for the eight months in the amount of \$1,040.00.

The landlord testified that the tenants were using an extraordinary amount of utilities. The landlord stated that they were discussing this matter with the tenants six months prior to January 2019.

The landlord testified that it was the tenants that stated that they would start paying a portion of the utilities. The landlord stated that they all sat down and went over the numbers and the tenants agreed that they would pay 1/3 of the expenses, which equalled the amount of \$130.00, per month.

The landlord testified that the tenants wanted this agreement to commence on December 1, 2018; however, they told the tenants to wait to start paying their portion of the utilities in January 2019, so they could start the year fresh. The landlord stated the tenants paid their portion for the next eight months. The landlord stated that this was a mutual agreement to changes the term of the tenancy agreement.

The tenants confirmed that this was an agreement. The tenants stated that it was not completed in writing.

Analysis

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

In this case, the parties agreed to change the terms of the tenancy agreement by the tenants paying 1/3 of the costs of utilities. This was due to the tenants' overconsumption of the utilities.

While I accept this was not in writing as required by the Act, as any changes to the tenancy agreement must be in writing. However, I am satisfied based on the evidence presented by both parties that this was a mutual agreement. I find the landlord had the right to rely upon the agreement and the actions of the tenants when they paid their portion of the agreed upon utilities. This is also supported by text message.

In light of the above, I dismiss the tenants' application without leave to reapply. Since the tenants were not successful, I decline to grant the tenants the cost of the filing fee.

Conclusion

The tenants' application is dismissed.

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: June 11, 2019

Residential Tenancy Branch