



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	For the landlord:	MNR-S, FF
	For the tenants:	MNSD, FF

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The landlord applied for the following:

- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The tenants applied for the following:

- a return of their security deposit; and
- recovery of the filing fee.

The landlord and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their affirmed testimony and to refer to relevant documentary or digital evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the

parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants for a loss of rent revenue, to keep the tenants' security deposit to apply towards any monetary award, and recovery of the filing fee?

Are the tenants entitled to the return of their security deposit and recovery of the filing fee?

Background and Evidence

The evidence shows the tenancy began on August 1, 2019 and monthly rent was \$2,000. The tenancy was for a one year fixed term agreement through August 1, 2020, as stated on the written tenancy agreement filed into evidence by the landlord.

The tenants paid a security deposit of \$1,000, which is being retained by the landlord, having made a claim against it.

Landlord's application –

The landlord's monetary claim is in the amount of \$2,000, which is the amount the landlord said she lost in rent revenue for the month of March 2020.

In support of her application, the landlord submitted that the tenants signed a one year, fixed term tenancy agreement for an end date of July 31, 2020. Instead of staying until the end of the one year, fixed term, the tenants gave notice of an early end of the tenancy, effective at the end of February 2020.

The landlord submitted that she was unable to find a new tenant for the rental unit until April 2020, causing her a loss of rent for March 2020, due to the tenants' breach of the fixed term tenancy agreement.

The landlord submitted that she began advertising her rental unit immediately in her usual manner, such as Craigslist, and other local sources, but was not successful until April 2020.

The landlord explained that the rental unit, which is the basement of her home, is usually rented by local university students and she never has any problems with attracting potential tenants.

The landlord said that she believes the problem with attracting a new tenant was the timing, as it was during a school year when few people are looking for student accommodations.

The landlord said that she is very particular about who she rents to, as her elderly mother lives upstairs with her. The landlord said that she does not want more than two tenants at the time. One inquiry was from someone just newly into the country from a Covid-19 hotspot, with more than two people. Another issue with some tenants was the potential for offensive cooking odors.

The landlord said that she requires quiet tenants due to her elderly mother's fragility.

The landlord's relevant evidence included a few advertisings, inquiries from potential tenants, and email communication between the parties.

Tenants' response –

The tenants submitted that they provided their notice of ending the tenancy on January 31, 2020, in an email, and on February 1, 2020, they met with the landlord, who agreed to sign a mutual agreement to end the tenancy.

Instead of signing the mutual agreement to end the tenancy, they received an email from the landlord on February 3, 2020, that she would not agree to sign the document.

The tenants submitted that the landlord's evidence shows incomplete responses from potential tenants. The tenants submitted that the landlord was not advertising the rental unit to the best extent possible and that they offered to help advertise and to show the rental unit.

The tenants claimed that the landlord's evidence shows a bias towards potential tenants, which caused them to be excluded from consideration.

The tenants' relevant evidence included email communication between the parties.

Landlord's rebuttal –

The landlord submitted that she is compelled to look for quiet tenants due to her elderly mother.

In response to my question for clarification of evidence from the hearing, the landlord said that she agreed to sign a mutual agreement to end the tenancy with the tenants, but ultimately did not sign the document when she discovered how few responses from potential tenants she received that time of year.

Tenants' application-

The tenants applied for a return of their security deposit, as the landlord continues to hold their security deposit.

The tenants stated that they provided their written forwarding address to the landlord on the condition inspection report (CIR) on February 27, 2020.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application –

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Section 62(2) provides me with authority to make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

In reviewing the landlord's evidence, the written tenancy agreement shows the end of the fixed term to be by July 31, 2019. The clear intent of the document is that the fixed term was for one year, which in this case, would be July 31, 2020. I accept this is an inadvertent error and the parties understood that the tenancy was for a year.

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term, in this case, July 31, 2020.

In the case before me, I accept that the tenants ended the tenancy prior to the end of the fixed term.

I have reviewed the oral and documentary evidence of both parties and find that the landlord initially agreed at the end of January 2020, to sign a mutual agreement to end the tenancy for March 1, 2020; however, she later retracted that agreement after she began advertising the rental unit. The landlord confirmed this in the hearing.

I therefore find on a balance of probabilities that the tenants relied on her agreement to sign the document when providing their notice in January 2020 to end the tenancy before March 1, 2020.

In this case, I find the legal principle of 'estoppel' applies to this application.

Estoppel is a rule of law that states when one party, the landlord here, by act or words, gives the other party, the tenants here, reason to believe that a certain set of facts upon which the other party takes action, the first party (landlord) cannot later, to their benefit, deny those facts or say that their earlier act was improper.

In effect, estoppel is a form of waiver, when one party does not enforce their rights and the other party relies on this waiver. Therefore, I find that when the landlord agreed to sign the mutual agreement, which she later retracted, she waived her right to seek loss of rent revenue from the tenants to the end of the fixed term.

For these reasons, I find that the landlord is estopped from claiming a loss of rent revenue for the month of March 2020.

I therefore dismiss the landlord's application for \$2,000 for loss of rent revenue and recovery of the filing fee.

Tenants' application –

Section 38 deals with the return of tenant's security deposits.

This section of the Act requires that the landlord must repay the tenant's security deposit or make an application claiming against the security deposit within 15 days of the later of the day the tenancy ends and the date the landlord receives the tenant's written forwarding address.

If a landlord fails to do either, the landlord may not make a claim against the tenant's security deposit and must pay the tenant double the amount of their security deposit.

In the case before me, the tenants said the tenancy ended on February 29, 2020, and that the landlord was provided the tenants' written forwarding address on February 27, 2020, on the condition inspection report.

The landlord applied for dispute resolution on March 11, 2020.

Therefore, the landlord applied within the 15 days of receiving the tenants' written forwarding address on February 27, 2020, and the end of the tenancy.

As I dismissed the landlord's application for the reasons listed and as the tenants properly provided their written forwarding address to the landlord, I find the tenants are entitled to a return of their security deposit of \$1,000.

I also grant the tenants recovery of their filing fee of \$100, due to their successful application.

The tenants are therefore granted a monetary order, pursuant to section 67 of the Act, for \$1,100, comprised of their security deposit of \$1,000 and the filing fee of \$100.

Should the landlord fail to pay the tenants this amount without delay, the tenants must serve the landlord with the monetary order to be enforceable. The order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

Conclusion

The landlord's application was dismissed in full.

The tenants' application for monetary compensation for their security deposit and recovery of their filing fee is granted. The tenants are granted a monetary order in the amount of \$1,100.

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: July 21, 2020

Residential Tenancy Branch