



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes: FFL FFT MNDCL-S MNDCT MNSD

Introduction

The Landlord seeks compensation against their former Tenants pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act"). By way of cross-application the Tenants sought compensation (the return and doubling of their security deposit, and for the cost of the application fee) against their former Landlord pursuant to sections 38(1), 38(6)(b), and 72 of the Act.

The Landlord attended the hearing, which commenced at 1:30 PM and ended at 1:44 PM. Neither Tenant attended the hearing.

Issues

1. Is the Landlord entitled to compensation?
2. Are the Tenants entitled to compensation?

Evidence and Analysis

The tenancy began on June 3, 2022. Rent was \$2,800 and due on the first day of the month. The Tenants paid a \$1,400 security deposit. A copy of the written tenancy agreement was in evidence, and it indicated that the tenancy was a fixed-term tenancy ending on June 2, 2023. However, the tenancy ended on October 1, 2022.

The Landlord filed their application for dispute resolution on October 12 and the Tenants filed their application for dispute resolution on October 18, 2022.

The Landlord seeks \$2,800 in lost rent due to, according to following the particulars of their application, which was also explained during the Landlord's testimony:

Without any prior knowledge of main issue they are experiencing, an email was received on August 29 to end fixed term tenancy from Oct 1, 2022. Happy to end

the tenancy if we can work together to get the place re-rented as soon as possible. However things escalated, had issue to arrange and confirm viewings towards end of September. The unit was not able to be rented out for Oct.

On August 29, the Landlord received the Tenants' notice to end the tenancy because (1) the pool in the multi-unit residential property was not working, and (2) the rental unit was "too hot." The strata prohibited installation of air conditioners, the rental unit was too noisy with the windows open, and a portable air conditioner was too expensive.

The Landlord communicated her understanding of the issues and explained their position. They also told the Tenants that they could end the tenancy early if the Tenants assisted the Landlord in finding a new tenant. The Landlord re-advertised the rental unit on Facebook the next day. Between August 29 and September 15, the Landlord only had three showings. On September 16 they lowered the advertised rent to \$2,700.

Section 44(1)(c) of the Act permits a tenancy to end if "the landlord and tenant agree in writing to end the tenancy." While parties often use the #RTB-8 form titled *Mutual Agreement to End a Tenancy*, there is no legal requirement for a landlord or tenant to use this form.

The Tenants sent an email to the Landlord on August 29, 2022, in which they stated, "[...] we must end our tenancy with you at the Reflections Building – please consider this our written notice - effective on October 1st 2022 at 1PM [...]."

The Landlord responded later that same day, "That's no problem at all. I am happy to end the tenancy early. I will list the place for rent as soon as possible. Thank you for accommodating viewings and cleaning required for viewings." There is, it is noted, no conditions or requirements that the Tenants do anything more at this point.

Based on this email communication between the parties, it is my finding that this written exchange constitutes the Landlord and the Tenants agreeing in writing that the tenancy would end effective October 1, 2022. Having found that the Tenants ended the tenancy in compliance with the Act, I can find no breach of the Act from which the Landlord is owed compensation for a loss of rent in October. While it is not lost on me that the Landlord ended up suffering a financial loss, because the Landlord agreed in writing with the Tenants' request to end the tenancy, any financial loss arising after the tenancy ended cannot be shifted onto the Tenant.

Accordingly, and with respect, the Landlord's claim for compensation, including the claim to recover the cost of their application fee is dismissed.

The Tenants failed to attend the hearing to make any argument as to why they believe they are entitled to a doubled amount of the security deposit. They are not entitled to a doubled amount, nor are they entitled to recover the cost of their application fee. I also note that the Landlord made their application for dispute resolution within 15 days of the tenancy ending, pursuant to section 38(1) of the Act.

However, the Tenants are entitled to the return of their security deposit of \$1,400.00 with an additional \$14.38 of interest as calculated in accordance with section 4 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003. (Using June 2, 2022, as the date on which the Landlord received the security deposit and June 11, 2023, as the date on which the security deposit is ordered to be returned to the Tenants.)

The Landlord is thus ordered to pay \$1,414.38 to the Tenants.

Conclusion

The Landlord's application is dismissed, without leave to reapply, and the Landlord is ordered to pay \$1,414.38 to the Tenants forthwith.

The Tenants' application, in respect of the claim for a double amount of the security deposit and the application fee, is dismissed without leave to reapply.

This decision is made on authority delegated under section 9.1(1) of the Act.

Dated: July 11, 2023

Residential Tenancy Branch