



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, FFL
 MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants.

One of the landlords has applied for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application.

The tenants have applied as against both landlords for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for return of all or part of the security deposit or pet damage deposit; and to recover the filing fee from the landlords.

Both named landlords and both named tenants attended the hearing, and the landlords were assisted by an Interpreter, who was affirmed to well and truly interpret the hearing from the English language to the landlords' Native language and from the landlords' Native language to the English language to the best of the Interpreter's skill and ability.

Both landlords and both tenants each gave affirmed testimony and the parties were given the opportunity to question each other.

At the commencement of the hearing I questioned the parties with respect to exchanging evidence. The landlords did not know that they had to provide evidence to the tenants, and therefore the landlords' evidence has not been provided to the tenants. One of the tenants indicated that each of the landlords was served with the tenants' evidence with the Application for Dispute Resolution and Notice of Dispute Resolution Proceeding.

Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for all parties to know what is before

me. Since the landlords have not provided any evidence to the tenants, I decline to consider the landlords' evidence. The tenants have provided a Proof of Service document indicating that the landlords were served on August 22, 2024 by registered mail. One of the landlords testified that the tenants' evidence has been received by the landlords. Therefore, all evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation for the landlords ending the tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?
- Should either party recover the filing fees from the other party?

Background and Evidence

The first landlord (BP) testified that this month-to-month tenancy began on July 1, 2019 and the tenants moved out of the rental unit on July 17, 2023. Rent in the amount of \$1,000.00 was payable on the 1st day of each month. No rent has been paid for July or August, 2023. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlords resided in the upper level of the home, however the husband landlord moved out, and the upper level was rented.

The landlord further testified that although the tenancy agreement says that rent will be paid in cash, the tenants never asked for receipts and therefore none were issued. It also states that the security deposit will be returned to the tenants less any itemized deductions.

On April 29, 2023 the landlords served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property, but changed the name of the document to Four Month Notice to End Tenancy For Landlord's Use of Property because the tenants asked for more time and the landlords agreed. The document was personally handed

to the husband tenant, but the landlord does not recall when. The reason for issuing it stated: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse.

The tenants paid for 13 days of rent for July, 2023 and said that the landlords could deduct the security deposit for the balance of the rent, but nothing was in writing.

The second landlord (JR) testified that the tenants never asked for receipts so none were given.

The tenants told the landlord's spouse that they needed 4 months to vacate and the landlords agreed. At the end of April, 2023 the landlords gave the notice to end the tenancy, but were not aware that compensation was required in the equivalent of 1 month's rent. The landlord acknowledges receiving a security deposit of \$500.00 and deducted the security deposit for the other half of the rent because the tenant told them to, but not in writing. The tenants stayed for 17 days.

The landlord also acknowledges receiving 10 days written notice from the tenants to move out earlier.

The landlord (JR) moved into the rental unit and still resides there.

The first tenant (SH) testified that the landlord husband was bound by a restraining order, and when he was allowed back on the property he was banging on the door of the rental unit, very aggressive and demanding a key. The tenant was home alone. The tenant didn't open the door, but called the other tenant. On July 17, 2023 the landlord started fighting with the tenant's husband and called police telling the tenants to leave, which they were doing.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$1,550.00:

- \$500.00 for the security deposit;
- \$450.00 for rent;
- \$500.00 for double the amount of the security deposit; and
- \$100.00 for the filing fee.

The tenant also testified that the landlord wife was served with a note on July 7, 2023 which contained the tenants' forwarding address. Then the tenants gave the landlord notice to end the tenancy earlier than the effective date of the landlords' Notice to end

the tenancy, which also contained the tenants' forwarding address. The tenants did not agree that the landlords could keep any portion of the security deposit.

The tenants moved out on the 17th of July, 2023 and should recover \$450.00. The tenants' notice to end the tenancy was given to the landlord wife personally on July 7, 2023.

No receipts were provided by the landlords, and the landlord denied the tenants' requests for receipts when asked.

The second tenant (MUP) testified that in April when the landlord served the tenants with the Notice to end the tenancy, the tenants requested 4 months notice. At that time only the landlord wife and a friend were there; not the landlord husband.

The tenant further testified that the landlord's testimony that the tenants didn't need the rent or security deposit back is not true. He wasn't there when the Notice to end the tenancy was served. The landlord demanded that the tenants pay \$2,100.00 for July and August, 2023 rent.

When the tenants were moving out the landlord banged and kicked at the door. Three days prior, he did the same thing, demanding the tenants leave and still demanding rent for July and August.

On July 7, 2023 the tenants gave 10 days notice to vacate the rental unit to the landlord wife personally. Before leaving the rental property the tenant asked for the security deposit and 1 month of rent except for 17 days. Due to stress, the tenants had to leave the property as soon as possible. When police came, they knew the landlord husband well and his behaviour, and they stayed for some time to watch and for the safety of the tenants.

No receipts were given by the landlord, and when the tenant asked the landlord refused.

Analysis

Firstly, a landlord may not include in a tenancy agreement that any part of a security deposit will be withheld for "itemized deductions" or insist that rent be paid in cash. Further, a landlord must give receipts for any money paid by the tenants in cash, whether they ask for a receipt or not.

Where a landlord gives a Two Month Notice to End Tenancy For Landlord's Use of Property the landlord is required by law to give the tenants the equivalent of 1 month's

rent payable under the tenancy agreement, even if the landlord gives more than 2 months notice. That is usually accomplished by not collecting rent for the last month of the tenancy, but the law requires a landlord to give that compensation to the tenants at the end of the tenancy or earlier.

The *Residential Tenancy Act* also states that once served with a Notice to end a tenancy for landlord's use of the property, the tenants may give the landlord 10 days notice to vacate the rental unit earlier, and must pay rent to the effective date of the tenant's notice, and the landlord must still provide 1 month's rent as compensation.

In this case, I have reviewed the evidence of the tenants, which includes a written notice to end the tenancy, dated July 7, 2023 and effective on July 17, 2023. That means that the tenants must pay rent for July 1, 2023 to July 17, 2023. In calculating the daily amount, I find that \$1,000.00 is equal to \$32.26 per day ($\$1,000.00 \div 31 \text{ days} = \32.26) and the tenants ought to have paid \$548.42 for July's rent ($\$1,000.00 - \$548.42 = \451.58). The tenants claim \$450.00, which I find should be \$451.58. The parties agree that the tenants moved out on July 17, 2023 so are not required to pay any rent for August. Since the landlords are required to compensate the tenants 1 month of rent, I find that the tenants are entitled to recover the difference from the landlords in the amount of \$451.58 ($\$1,000.00 - \$548.42 = \451.58), and I dismiss the landlords' application for unpaid rent and recovery of the filing fee.

The tenants' letter dated July 7, 2023 also contains a forwarding address of the tenants. The law states that a landlord must return a security deposit in full to a tenant within 15 days of the later of the date that the tenancy ends or the date the landlord receives the tenants' forwarding address in writing, or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenants.

In this case, I accept the undisputed testimony of the tenants that the letter of July 7, 2023 was personally handed to one of the landlords on July 7, 2023. The landlords have made a claim for unpaid rent, but have not applied to keep the security deposit and have not returned any portion of it to the tenants, and did not file the application until September 3, 2024, which is well beyond 15 days. Therefore, I find that the landlords must return double the amount of the security deposit to the tenants, or \$1,000.00.

Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlords.

Having found that the landlords owe \$451.58 to the tenants for compensation, and \$1,000.00 for double the amount of the security deposit, and \$100.00 for the filing fee, I grant a monetary order in favour of the tenants as against the landlords in the amount of \$1,551.58. The landlords must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,551.58.

This order is final and binding and may be enforced.

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: October 24, 2024

Residential Tenancy Branch