Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord did not make a written submission.

The landlord confirmed receipt of the tenant's evidence that was sent on September 2, 2014, via courier to the service address indicated on the application. The landlord received that evidence the day prior to the hearing. Even though that evidence was not served within the required time-frame the landlord agreed that the evidence could be referenced during the hearing.

The parties were provided with information on the need to serve documents as required by the Rules of Procedure.

The landlord has made a claim for loss of rent revenue, not unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $850.00 for loss of November 2013 rent revenue?

May the landlord retain the security deposit?

Background and Evidence

The parties agreed that a 1 year fixed-term tenancy commenced on May 1, 2013. Rent was $1,700.00 due on the 1st day of each month. A security deposit in the sum of $850.00 was paid.

In July 2013 the tenants had indicated a desire to end the tenancy. There was no dispute that on July 16, 2013 the landlord emailed the tenants indicating:

> *" we think it is fair that you move out after six months (so October 31st) even thought you had signed a contract with one year minimum tenancy agreement.....again we feel we are being more than fair."*

There was no dispute that no more was said in relation to the end of the tenancy until the move-out condition inspection, at which time the landlord told the tenants they would not receive their security deposit. The tenants said that the landlord told them, that as a result of the stress they had caused, he would retain the deposit. The tenants had hired a cleaning service and there was no dispute in relation to the state of the rental unit.

The landlord stated that he felt the tenants had terminated the lease agreement. The landlord said that when he gave the tenants permission to vacate they had just had a baby; that his life had gone through a significant change. The landlord also felt he gave permission under duress as he believed it was likely the tenants could retaliate if he denied permission. There was the possibility the tenants could do damage to the rental unit.

There was no dispute that tenants provided the landlord with their forwarding address, sent via email. The tenants agreed that the landlord then applied claiming against the deposit within fifteen days of receipt of the address.

The parties agreed that throughout the tenancy communication occurred via email.

Analysis

Section 44 of the Act sets out how a tenancy may end. I find, from the evidence before me, that the landlord provided written agreement that the tenancy would end effective October 31, 2014. I find that this email constitutes written agreement as required by section 44(1)(c) of the Act. The email sent to the tenants gave no indication that the landlord was under any kind of duress. The landlord's fear that the tenants might

damage the property had no basis. The tenants had not made any threats or engaged in any behaviour that could reasonably be found as threatening.

Therefore, I find, pursuant to section 44(f) of the Act that the tenancy ended, by agreement on October 31, 2014.

As the tenancy ended in accordance with the legislation I find that the claim for rent revenue beyond the end date of the tenancy is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenants are entitled to return of the $850.00 deposit, forthwith.

Based on these determinations I grant the tenants a monetary Order in the sum of $850.00. 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.

Conclusion

The landlord's claim is dismissed.

The tenants are entitled to return of the security deposit.

This decision is final and binding and 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 12, 2014

Residential Tenancy Branch