



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Preliminary Issue

An Agent appeared at the hearing and stated that she was representing the Landlord E.R. She confirmed that she did not have any firsthand knowledge of what had taken place between the Landlords and Tenants but stated she understood what was told to her by the Landlords.

The Landlord R.R. also appeared at the teleconference hearing and affirmed that she was present during the meetings with the Tenants and could provide first hand testimony of what transpired.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlords for their application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order?

Background and Evidence

The Tenants submitted that on May 12, 2012, they had entered into a month to month tenancy agreement with the Landlords at which time they paid their security deposit of \$1,100.00 and gave the Landlord the following post dated cheques: (1) June rent of \$2,200.00 dated June 1, 2012; and (2) the pet deposit of \$1,100.00 dated June 15, 2012. The tenancy agreement was effective June 1, 2012 however the Landlords agreed to allow them to move into the rental unit early, on May 24, 2012 at no charge if they agreed to put the hydro in their name by that date. Then on May 12, 2012 the Tenant L.O. showed up at the rental unit at the scheduled time to conduct the move in inspection and get the keys however the Landlord R.R. refused to give her access to the unit unless she paid the June 1, 2012 rent in full that day.

The Tenants submitted that the copies of the tenancy agreement and hand written note/receipt of payments provided in evidence by the Landlord had been altered. They stated that they signed the tenancy agreement during the May 12, 2012 meeting and that the Landlords told them they would bring a copy with them on May 24, 2012 for the Tenants. The Tenants point out that the copy provided in evidence is not signed. Also, they submitted that there was more writing at the bottom of the hand written receipt/note where the Landlord had agreed to allow them to rent out the basement bedroom to another tenant to help with the rent payments; however the copy provided in evidence does not show this.

I asked the Landlord to explain to me why the Tenants were stating her evidence is different than the agreement and notes they signed on May 12, 2012. R.R. began to speak however during the course of her testimony I found the Agent to be leading R.R. I requested that the Agent stop directing R.R.

The Agent asserted that R.R. did not understand English, as it was her second language. I asked the Agent to please be quiet in order to allow R.R. to tell me what had taken place in her own words. Shortly afterwards I could hear someone from the Landlord's room writing frantically as R.R. was stalling with her testimony. I questioned the Agent and asked if she was writing what R.R. should be saying. The Agent denied directing R.R. in writing and said it was her birthday and she was simply writing thank you notes to people who had sent her birthday wishes. I requested that she reframe from writing notes during the hearing.

The Landlord continued and was able to provide me with her testimony in a clear concise manner. The Landlord denied altering the tenancy agreement or the written note/receipt pertaining to the deposits and post dated cheques received from the Tenants. She confirmed that they did not provide copies of the agreement and note/receipt and that she was to give them copies on May 24, 2012 when they took possession of the unit.

The Landlord confirmed that her and her husband met with the Tenants on May 12, 2012, and had agreed to allow the Tenants to move into the unit as of May 24, 2012. She confirmed that she met with Tenant L.O. on May 24, 2012 when she told L.O. they could not have possession of the unit until they paid the \$2,200.00 June 1, 2012 rent in full. I asked the Landlord why she changed the agreement with the Tenants and she stated that the tenancy agreement was not signed and they were worried the Tenants could not afford the rent. She said that the week prior to May 24th, the Tenants had called asking for the key to show the house to their prospective tenant. The Landlord submitted that they did not give the Tenants permission to list their house on the internet and argued they did not see the advertisement until they received the Tenants' evidence. The Landlord confirmed they have since re-rented the unit to other tenants.

The Tenants submitted that the Landlords had agreed to allow them to rent out the basement and they were being proactive in getting a third tenant as soon as possible so they placed an advertisement on the internet. Then sometime during the week of May 14, 2012 they had called the Landlords and requested a key for the rental unit so they could show their prospective third tenant the space and the Landlord's refused. Then they showed up on May 24, 2012 with all their possessions packed, their dogs at doggy daycare for the day, with people moving into their previous place and were told they cannot have the rental unit unless they paid the full rent that day. The Tenants stated they were not prepared for this change as their agreement was to pay the rent on June 1st, 2012 and the pet deposit on June 15, 2012, and the Landlord already had their post dated cheques for these payments. The Landlords returned their security deposit May 24, 2012 however it was given to them by Cheque and not cash, along with all of their post dated cheques. They have since cashed the cheque and it did clear the bank okay.

The Tenants argued that the Landlords changed their agreement, with no notice, leaving them packed and with no place to live so they are seeking the following compensation:

\$2,200.00	Compensation equal to 1 Month's rent for changing the agreement with no notice
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\$ 150.00	K.M. lost wages May 11, 2012 meeting with the Landlords
\$ 100.00	Lost wages for K.M. who left work to meet with R.R. after she refused to give L.O. the keys for the unit on May 24, 2012
\$ 200.00	Lost wages for L.O. \$100.00 for each day May 24, 2012 and May 26, 2012
?????	Unknown hydro costs – bill had not been received for hydro at time of application for connection and disconnection
\$300.00	To cancel the movers
\$ 70.00	for dog daycare for two dogs @ \$35.00 each
\$ 33.58	For the internet advertisement as per receipt provided in evidence

At the end of the hearing I ordered the parties to submit the following additional evidence to the *Residential Tenancy Branch* no later than August 10, 2012:

The Landlord was ordered to submit the original unaltered tenancy agreement with the written note/receipt for payments received

The Tenants were ordered to provide evidence from BC Hydro to prove that the electricity was connected and then disconnected at the rental unit, under their name.

After stating the above verbal orders I asked if R.R. understood what “original, unaltered” meant and she said yes. The Agent interjected stating R.R. did not understand. I questioned how the Agent would know what R.R. understood without discussing the matter with R.R. The Agent replied stating she knew what R.R. understood. I asked R.R. if she understood what an original document was and if she understood what unaltered meant. R.R. stated that she understood.

Analysis

On August 2, 2012 the Tenants provided a copy of a B.C. Hydro bill into evidence which indicates the Tenant K.M. had switched the hydro for the rental unit, into her name, effective May 24, 2012 and was charged \$20.26 to have the account cancelled. In the interest of upholding the principles of administrative justice, a copy is attached to this decision for all parties.

On August 3, 2012, the Landlords submitted an original tenancy agreement, which is written on both sides and is four pages in length. A copy of this document is attached to this decision and the original will be returned to the Landlords as requested.

It was evident to me that during the hearing the Agent was attempting to assert that the Landlord R.R. did not understand English. Also, the Landlord R.R. was alleging that they did not have a tenancy agreement because they had not signed the tenancy agreement document. I found that during the hearing the Landlord, R.R., provided a clear account of what transpired, in English and in a logical fashion. At one point R.R. followed the Agent's lead and stated she did not understand English and she needed her Agent to translate. I acknowledged this request and informed both parties that if R.R. did not understand what was being asked of her she could seek translation from the Agent.

I note that it was not until I questioned the validity of the Landlord's evidence that R.R.'s understanding of English became an issue. It was not mentioned again until the end of the hearing when I gave my verbal orders and the Agent interjected stating R.R. did not understand. I note that R.R. later confirmed that she understood my orders.

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Based on the foregoing, I find that oral terms form part of tenancy agreements and may still be recognized and enforced.

In this case, both parties confirmed that on May 12, 2012 they made a verbal agreement that the Tenants would be given possession of the rental unit on May 24, 2012, in exchange for cash payment of \$1,100.00 for the security deposit, which was provided May 12, 2012, and payment of rent of \$2,200.00 which was due on June 1, 2012 given May 12, 2012 in the form of a post dated cheque and payment of the pet deposit of \$1,100.00 which was due on June 15, 2012 and provided in the form of a post dated cheque on May 12, 2012.

The Landlords confirmed that they singularly changed the terms of their agreement, without notice to the Tenants, when they refused to give the Tenants possession of the rental unit on May 24, 2012 and demanded payment of \$2,200.00 rent before they would hand over the keys. Based on the foregoing, I find the Landlords' action to be a breach of section 14(2) of the Act which stipulates that terms of a tenancy agreement may be amended **only if both the landlord and tenant** agree to the amendment [emphasis added].

Based on the aforementioned I find the Tenants have met the burden of proof to establish the Landlords breached their agreement causing them to scramble to find another place to live and to suffer additional costs. Therefore I award the Tenants

\$2,253.84 in compensation which is comprised of \$2,200.00 for aggravated damages, \$33.58 advertising costs, and \$20.26 in hydro costs.

There was insufficient evidence to support the remainder of the Tenants' claim for wages, cancellation costs for the moving truck, and doggy daycare, therefore these items are dismissed, without leave to reapply.

The Tenants have primarily been successful with their application; therefore I award recovery of their **\$50.00** filing fee.

Conclusion

The Tenants have been issued a Monetary Order in the amount **\$2,303.84** (\$2,253.84 + \$50.00). This Order is legally binding and must be served upon the Landlords.

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: August 07, 2012.

Residential Tenancy Branch