



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, a monetary order for a return of their security deposit, and for recovery of the filing fee.

The tenants appeared; the landlords did not appear.

The tenant testified that they served the landlords with the Application for Dispute Resolution and Notice of Hearing by registered mail on June 28, 2012. The tenant supplied testimony of the tracking number of the registered mail.

I find the landlords were served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlords' absence.

The tenants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order, which includes their security deposit, and to recover the filing fee?

Background and Evidence

The rental unit was a bedroom in the landlord's apartment.

The tenants said that the tenancy was to start on April 1, 2012. Two weeks prior to the start of the tenancy the tenants met with the landlord and gave the landlord a cheque for \$1025.00, which was for the first month's rent of \$650.00, \$50.00 for a key deposit and \$325.00 for a security deposit.

According to the tenants, directly prior to moving their personal property into the rental unit on March 31, 2012, they discovered that the landlord had lied about working for the government when there were no records of him working there. The tenants said the landlord gave them a fake business card.

This led to the tenants not trusting the landlord and they did not move in. When questioned, the tenants said the rental unit was ready for them to move in and they chose not to when they determined the landlord could not be trusted.

The tenants said they later met with the landlord, who gave them a cheque for the same amount he had received, \$1025.00, but the cheque was not honoured by the landlord's bank.

The tenants said they inquired with the police, who said that there was no record of the named landlord occupying the address associated with the rental unit and therefore the apartment. The tenants confirmed hearing about the rental unit on a popular, online website for free advertising.

The tenants, when questioned, stated that they have not provided the landlord their written forwarding address.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In the case before me, I cannot find a violation of the Act by the landlord. In reaching this conclusion, the tenants confirmed that they paid the first month's rent and the landlord had the rental unit ready for occupancy for that month, which was his obligation under the tenancy agreement and the Act. The tenants made the choice not to move in, and I therefore cannot conclude that the tenants suffered a loss due to the landlord's breach of the Act.

I therefore find the tenants failed to meet step 2 of their burden of proof and I dismiss their claim for \$650.00 for the first month's rent.

I find the tenants are entitled to a return of their security deposit of \$325.00 and the key deposit of \$50.00, for a total of \$375.00.

As I find the tenants' application contained merit, I award them recovery of the filing fee of \$50.00.

Conclusion

I find the tenants have established a total **monetary claim** in the amount of **\$425.00**, comprised of their security deposit of \$325.00, the key deposit of \$50.00 and recovery of the filing fee of \$50.00.

I therefore grant the tenants a final, legally binding monetary order in the amount of \$425.00, which I have enclosed with the tenants' Decision.

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

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: September 05, 2012.

Residential Tenancy Branch