



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 4, 2014, by the Landlords to obtain a Monetary Order for unpaid rent or utilities; 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 Tenants for this application.

The Landlords testified that each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and their evidence, on April 6, 2014, by registered mail. Canada Post receipts were provided in the Landlords' evidence. Based on the submissions of the Landlords I find that each Tenant was deemed served notice of this proceeding on April 11, 2014, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenants' absence.

Issue(s) to be Decided

Are the Landlords entitled to a Monetary Order?

Background and Evidence

The Landlords testified that the Tenants responded to their advertisement to rent their suite and communicated with them, as follows, through emails, as provided in their evidence. The Landlords stated that on March 18, 2014 the Tenants agreed to a six month lease and to pay the monthly rent of \$1,100.00. On March 19, 2014 the Tenants agreed to take the unit as of April 1, 2014, and on March 20, 2014 the Tenants sent an email money transfer to the Landlord of \$550.00 as payment for the security deposit and to secure their tenancy.

The Landlords submitted that on March 23, 2014 the Tenants called advising that they had decided not to take the unit, which they followed up with an email on March 24, 2014, which included their forwarding address.

The Landlords stated that they returned the Tenants' security deposit when they mailed a cheque on April 1, 2014, and as per their evidence the cheque was cashed by the

Tenants. The Landlords argued that once they received the Tenants' security deposit they informed all interested people that the unit was no longer available. Once the Tenants withdrew from the agreement the Landlords said they contacted the interested people but they had already found another place. The Landlords are seeking to recover the \$1,100.00 for loss of April's rent, because they were not able to re-rent the unit until May 1, 2014.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as 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.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable.

The terms of this agreement are the tenancy was to commence on April 1, 2014, the monthly rent was \$1,100.00, and the security deposit of \$550.00 was paid by the Tenants on March 20, 2014.

Therefore, based on the above, I find that the terms, as noted above, of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing one months notice to end tenancy on a date that is effective no earlier than the end of the fixed term.

The evidence supports the Tenants breached Section 45 of the Act by ending their tenancy without proper notice. This breached caused the Landlords to suffer a loss of April 2013 rent. Accordingly, I find the Landlords have met the burden of proof and I award their loss of April 2013 rent in the amount of **\$1,100.00**.

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

The Landlords have been issued a Monetary Order in the amount of **\$1,150.00 (\$1,100.00 + \$50.00)**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced 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: July 30, 2014

Residential Tenancy Branch

