



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on October 8, 2014 seeking to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. No one was in attendance for the Tenant.

The Landlord testified that the Tenants were served notice of their application and this hearing by registered mail on October 10, 2014. Canada Post tracking information was provided in the Landlord's testimony. The Tenants submitted documentary evidence in response to this claim. Based on the foregoing, I find the Tenants were deemed served notice of this proceeding as of October 15, 2014, five days after they were mailed.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord testified that the Tenants entered into a written fixed term tenancy agreement that began on December 15, 2013 and was not set to end until December 15, 2014. Rent was payable in the amount of \$1,050.00 on the first of each month and on December 15, 2013 the Tenants paid \$525.00 as the security deposit. No condition inspections were conducted at move in or at move out and no condition report forms were completed.

The Landlord submitted that on June 5, 2014 the Tenants gave her their notice to end tenancy and that notice was to be effective August 31, 2014. The Tenants vacated the rental unit by August 25, 2014.

The Landlord stated that she was not provided the Tenants' forwarding address. She submitted that she received a letter from the Tenants that said they wanted their deposit returned but the letter did not have their forwarding address listed on it. When I asked how the Landlord obtained the Tenants' address to serve her application to the Tenants she submitted that she received their forwarding address on October 1, 2014; however, she could not clarify how that address was received.

The Landlord focused the majority of her testimony on an alleged meeting whereby she said she attended the rental unit on August 25, 2014, holding the Tenant's posted dated cheques in her hand. During that visit the Landlord said that an argument broke out where the Tenant disrespected her and the Tenant grabbed the Tenant's post-dated cheques out of the Landlord's hands. The Landlord continued to place a lot of emphasis on her assertion that the Tenant took back her postdated cheques. Upon further clarification the Landlord began to argue that she did not receive evidence from the Tenants in response to her claim, and she denied that she continued to hold the Tenants' postdated cheques.

The Landlord testified that she is now seeking \$1,035.00 monetary compensation which is comprised of half of a month's rent, a \$100.00 move out fee that the Tenants failed to pay; \$116.00 to change the locks because the keys were not returned; \$88.00 to change the mailbox key and for an additional fob that was not returned; \$675.00 for her Agent's fee to find a new tenant; \$23.00 registered mail fees, and the filing fee of \$50.00. The Landlord stated that she did not submit documentary evidence to support her claim and argued that she is entitled to keep the security deposit.

The Landlord stated that her subsequent tenant did not move into the rental unit until September 15, 2014. Upon further clarification the Landlord testified that she gave the subsequent tenant the keys to the rental unit on August 29, 2014 and they told her they were not going to move in until September 15, 2014. The Landlord stated that she did not monitor to see when the new tenants actually moved in.

Analysis

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In regards to registered mail fees for bringing this application forward and for the cost of hiring an Agent, I find that the Landlord has chosen to incur those costs and those costs cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Section 89 of the Act provides for various methods of service, some which do not incur a cost. Also, there is no requirement in the Act that states a landlord must use an Agent to find a tenant. Therefore, I find costs incurred due to a service method choice or a choice to hire an agent, are not a breach of the Act.

Based on the above, I conclude that the Landlord may not claim mail costs or costs to hire an agent, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. Accordingly, those claims are dismissed, without leave to reapply.

In absence of documentary evidence to prove the Landlord incurred costs, or the actual amount of those costs, to pay a strata move out fee, or incurred costs to acquire keys that were allegedly not returned by the Tenants, I find there to be insufficient evidence to meet the burden of proof. Accordingly, the Landlord's claim for a move out fee, to change the locks, a key fob, and mailbox keys, are dismissed, without leave to reapply.

The evidence supports that the Tenants paid rent for the full month of August 2014 and a subsequent tenant was given possession of the rental unit as of August 29, 2014. Therefore, the Tenants have no legal requirement to the rental unit or tenancy agreement as of August 29, 2014. Therefore, the Landlord's claim for unpaid rent or loss of rent for half of September 2014 has no merit, and is dismissed without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

The Landlord has not been successful with their monetary claim. Therefore, the Landlord is not entitled to retain any portion of the Tenants' security deposit. As such, the Landlord is hereby ordered to return the Tenants' security deposit of \$525.00 plus \$0.00 interest to the Tenants forthwith. I further order the Landlord to return to the Tenants any postdated cheques that they continue to have in their possession.

Conclusion

I HEREBY DISMISS the Landlord's application in its entirety, without leave to reapply.

The Landlord has been ordered to return the Tenants' security deposit forthwith. In the event the Landlord fails to comply with this order, the Tenants have been issued a Monetary Order for **\$525.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with the written Monetary Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

If the Landlord is still in possession of postdated cheques issued by the Tenants, she is ordered to return those postdated cheques to the Tenants forthwith.

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: May 25, 2015

Residential Tenancy Branch

