



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FF
MNSD FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed on January 16, 2015, seeking a Monetary Order to keep all or part of the security deposit and recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on February 05, 2015, seeking a Monetary Order for the return of double the Tenant's security deposit and to recover the cost of the filing fee from the Landlords for his application.

The Landlords submitted documentary evidence that on January 20, 2015, service of their application and hearing documents was conducted via registered mail to the service address listed on the Tenant's application for Dispute Resolution, in accordance with section 89 of the *Act*.

Canada Post tracking information confirms that Canada Post attempted delivery of the package on January 23, 2015 and that a notice card was left that date to advise the tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on January 26, 2015 that the registered mail was available for pick up.

As of February 18, 2015 the Canada Post tracking information confirms that the Tenant still did not pick up the registered mail. Based on the foregoing information, I find that the Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of the Tenant to avoid service. Therefore, I find the Tenant was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*.

The Landlord confirmed receipt of the Tenant's application and notice of hearing documents. However, no one appeared at the teleconference hearing on behalf of the Tenant; despite the Tenant being served with notice of the Landlord's application in accordance with the *Act* and

despite having their own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Should the Tenant's application be dismissed with or without leave to reapply?
2. Have the Landlords proven entitlement to monetary compensation in order to keep the security deposit?

Background and Evidence

The Landlords testified that they entered into a verbal tenancy agreement with the Tenant for a month to month tenancy that was scheduled to begin on October 1, 2014. During the first week of September 2014 the Tenant paid the Landlords \$627.00 by cheque as payment for the security deposit, at which time the Landlords gave the Tenant the keys to the rental unit.

The Landlords submitted that the Tenant had two sons and that he was going to move into the rental unit over a period of time to allow his boys to adjust to the transition of moving into a new house. The Landlords argued that they told the Tenant he would have to pay full rent of \$1,375.00 per month starting October 1, 2014 and that he could take whatever time he needed to move in because he would have full possession of the unit.

The Landlords argued that when they contacted the Tenant on October 3, 2014 to pick up the October rent the Tenant told them that he was not going to pay rent until the end of the month. They said the Tenant began arguing that he was not going to occupy the rental unit full time until the end of October so he was not going to pay rent for October.

The Landlords submitted that they could not come to agreement with the Tenant on what rent was to be paid and the Tenant simply refused to move in. As a result the Landlords said they lost the month's rent for October so they are seeking to keep the security deposit.

Upon further clarification of their application the Landlords could not explain why they made application for \$650.00 when they testified the Tenant paid \$627.00 as the security deposit. They said they simply wish to keep the security deposit to cover part of their loss of rent for October. They are not seeking the remainder of their loss as they know they will not be able to get any more money out of the Tenant.

There was no evidence submitted in support of the Tenant's application, or in response to the Landlords' application, as no one was in attendance on behalf of the Tenant.

Analysis

After careful consideration of the foregoing and on a balance of probabilities I find as follows:

Landlords' application

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

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.

Section 16 of the Act stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenant cancelled the tenancy agreement prior to occupying the rental unit and without proper notice which is a breach of section 45(1) of the Act. The Tenant's breach caused the Landlords to suffer a loss of rent of \$1,375.00 for the month of October 2014. Accordingly, I find the Landlords have met the burden of proof to establish their claim.

Section 72(2)(b) of the *Act* provides that if the director orders a tenant to pay any amount to a landlord the amount may be deducted from any security deposit or pet damage deposit held by the Landlord.

The Landlords submitted that they will not be seeking to recover any amounts or losses from the Tenant that exceed the security deposit previously paid to them by the Tenant. Therefore, I Order the Landlords to retain the security deposit, either \$650.00 or \$627.00 whichever amount was paid, as full payment and I declined to award recovery of their filing fee, pursuant to section 72(2)(b) of the Act.

Tenant's application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for twenty five minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the Tenant's application dismissed, without liberty to reapply.

Conclusion

The Landlords have been successful with their application and were ordered to retain the Tenant's security deposit as payment in full of the awarded compensation for loss of October 2014 rent.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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 13, 2015

Residential Tenancy Branch

