



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNDC

Introduction

This is an application brought by the tenant(s) requesting a monetary order in the amount of \$6900.00 and recovery of their \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are:

- Whether the tenants have the right to return of \$2300.00 rent they paid to the landlord.
- Whether the tenants have the right to an order for return of double their security/pet deposits.

Background and Evidence

On June 4, 2014 the tenants paid the landlord \$2300.00 for one month's rent, and an \$1150.00 security deposit security deposit, and an \$1150.00 pet deposit or a total of \$4600.00.

Return of rent

The tenants have argued that, although they paid one month's rent and security/pet posits, no written agreement was ever completed and therefore it is their position that there was no tenancy agreement, and their rent and security deposit should be returned.

The tenants of further argued that although they had viewed photos of the property and discussed the rental property with the landlord over the phone, the property was not as described by the landlord, and when they viewed the property on June 7, 2014 they determine that the property was not going to be suitable for their needs.

The tenants stated that the landlord had told them that the property needed some TLC, however the following deficiencies existed when they view the property which was more TLC than expected:

- The driveway was rutted and in poor condition.
- The yard was overgrown and would need substantial work.
- Although the property was 8 acres, only approximately 1 acre was suitable for their horses and that would be insufficient space. The remainder of the property was brush.
- The cottage on the property was not suitable for living without substantial work.
- The main house smelled musty.
- The dishwasher still had dirty dishes in it.
- Cellular telephone service was not available in the area, (even though the landlord had told them it was).
- The size of the house was smaller than it appeared in the photos, and their furniture would not have fit in the house.

The tenants further stated that when they pointed out these deficiencies to the landlord, the landlord stated that she did not want to do any further work on the property and would be only willing to spend approximately \$100.00 for to improve the state of the property.

The tenants further stated that when the landlord brought out the tenancy agreement papers for them to sign they informed her that they would not be taking the place and asked the landlord to return their money. The landlord then told them to think about it and call her that night; however when we called the landlord, she stated she would not be returning our money.

Landlord stated that it is her position that once the tenants paid the rent and security deposit, a verbal tenancy agreement was formed, and all that was left was for the tenants to sign the actual written agreement when they came to view the property.

Landlord further testified that she never misled the tenants, and she had honestly discussed the condition of the property with the tenants prior to accepting the rent and security/pet deposits. The tenants had been informed the property needed some TLC; however the tenant stated that he was quite sure he was able to take care of the property. She did not misrepresent the condition of the property.

The landlord further stated that she had told the tenants all about the property, and it had been discussed quite a bit, including the fact that 1 acre was developed and the rest was bush.

The landlord further stated that:

- The driveway at the rental property was not washed out; it was just a normal gravel driveway.
- She had spent a great deal of time cleaning up the property and it was not in poor condition, although as she had previously stated to the tenants, it did need some TLC still.
- The cabin was finished and in good condition.
- The house did not smell musty and she has had no complaints from the people who subsequently rented the unit.
- There were a few small items accidentally left in the dishwasher cutlery drawer.
- She had never told the tenants there was cellular telephone service in the area.
- She had never misrepresented the size of the house, and the possibility that the tenants furniture or artwork would not fit was not her fault.

The landlord further testified that when she brought out the tenancy agreement for the tenants to sign, they did not tell her they were not going enter into a tenancy , they simply told her they would contact her later. The tenants did call her later that day and it was at that time they told her they were not going to take the rental unit, and that they wanted their money returned.

The landlord believes she should not have to be returning the tenant money as it was the tenants that backed out of the tenancy agreement, not her and she was unable to re-rent the unit until September 1, 2014 and only at a reduced rent.

Security deposit

The tenants are requesting an order for return of double the security/pet deposits, claiming that the landlord was served with a forwarding address in writing and has failed to return the deposit within the 15 day time.

Counsel for the tenant stated that a forwarding address in writing was mailed to a PO Box that was found through land titles, and was also e-mailed to the landlord on June 18, 2014.

The landlord testified that the PO Box to which the tenant's legal counsel claims to have mailed a forwarding address in writing is not her PO Box, and was not her PO Box in June of 2014.

The landlord also testified that she never received an e-mail with a forwarding address in writing.

Analysis

Return of rent

"Tenancy agreement" is defined in the Act to include both oral and written agreements:

- "tenancy agreement" means an agreement, whether written or oral, express or implied, between the landlord and the tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy rental unit:

The sufficiency of an oral tenancy agreement was confirmed by the British Columbia Supreme Court in *Johnson v. Patry*, 2014 BCSC 540.

Further, pursuant to section 16 of the Act, the rights and obligations of the 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.

A contract or an agreement between two parties is formed when there is an offer, acceptance and exchange of consideration.

Determining whether or not the tenancy agreement exists between these parties requires me to identify:

- what, if any, offer was made and by whom;

- what, if any, acceptance was made and by whom; and
- what, if any, consideration was exchanged by the parties

I find that an offer was made by the landlord when the landlord agreed to rent the unit to the tenants for \$2300.00 per month.

I find the acceptance by the tenants occurred when the tenants agreed to pay one month's rent of \$2300.00, in advance to the landlord.

I also find that consideration was exchanged between the parties when the tenants forwarded the \$2300.00 rent and combined \$2300.00 security/pet deposits to the landlord, and the landlord agreed to meet the tenants to sign the written tenancy agreement.

Secondly, although the tenants claim there were numerous deficiencies at the rental property and that the property had been misrepresented, it is just their word against the landlords and that is insufficient to meet the burden of proving their claims.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Therefore it's my finding that there was a tenancy agreement between the parties and the tenants did not have the right to end the tenancy without providing the proper section 45 Notice to End Tenancy.

Since this tenancy agreement was entered into in early June of 2014, and the landlord was unable to re-rent the unit until September 1, 2014, the tenants breach of the tenancy agreement resulted in a loss the rental revenue to the landlord that exceeds the amount of rent paid, and therefore the landlord is not required to return any rent to the tenants.

Security deposit

It is my finding that the application for return of the security deposit was premature because the tenants had not served the landlord with a forwarding address in writing by a method allowed under the Residential Tenancy Act.

Section 88 of the Residential Tenancy Act states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Although the counsel for the tenants stated that the forwarding address was mailed to a PO Box they found through a land title search, there is no evidence show that PO Box belonged to the landlord at the time that letter was mailed.

Further, e-mail is not included as one of the methods for service of documents under the Residential Tenancy Act, and unless the landlord admitted to receiving the e-mail, it would not be considered served. In this case, as stated above, the landlord does not admit to receiving an e-mail with a forwarding address.

Section 39 of the Residential Tenancy Act states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Therefore since this tenancy ended on June 7, 2014 when the tenants informed the landlord they would not be moving into the rental unit, the one-year timeframe has now passed and the tenant's right to the return of their security deposit is extinguished.

Conclusion

This claim is dismissed in full 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: August 19, 2015

Residential Tenancy Branch

