



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNCD, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of the security deposit and rent paid; and, compensation for other damages and loss under the Act, regulations or tenancy agreement. The landlord did not appear at the hearing. The tenants submitted evidence, including a registered mail receipt, the returned registered mail envelope, and registered mail tracking number, to establish that they served the hearing documents upon the landlord by way of registered mail sent on May 4, 2015. The address used for service was the landlord's address of residence and where they met the landlord to discuss the terms of tenancy and the address the landlord provided as his service address on the tenancy agreement. The registered mail was returned as unclaimed.

Upon review of the registered mail envelope, the tenancy agreement, and the tenants' undisputed testimony, I was satisfied the tenants correctly addressed the registered mail to the landlord at the landlord's address for doing business as a landlord.

Section 90 of the Act deems a person to have received documents five days after mailing even if the person refuses to accept or pick up their mail.

In light of the above, I found the landlord to be deemed served with the hearing documents and I continued to hear from the tenants without the landlord present.

Issue(s) to be Decided

1. Are the tenants entitled to return of rent and security deposit they paid to the landlord?
2. Are the tenants entitled to compensation for other damages and losses under the Act, regulations or tenancy agreement as claimed?

Background and Evidence

The tenants met with the landlord to view the residential property he had advertised for rent and the tenants gave the landlord a security deposit of \$475.00 on February 27, 2015 for the monthly rent of \$950.00. The tenants returned the following day and gave the landlord \$950.00 for rent for March 2015 and signed a tenancy agreement. The tenancy agreement indicates the

tenancy was to commence February 28, 2015 for a fixed term of 12 months for a monthly rent of \$950.00 including utilities such as heat, electricity and cablevision. The tenants provided copies of the tenancy agreement, the receipts the landlord gave them for their payments; as well as a copy of the bank draft they used to pay the security deposit and a receipt for a Money Order of \$950.00.

I heard that the landlord had given the tenants a key that was purportedly for the rental unit but he did not give them a key to the building entry doors. The tenants tried on numerous occasions to meet with the landlord to retrieve a key to the building but despite waiting for the landlord, or his agent, for hours on end the landlord never appeared. The tenants provided copies of numerous text messages or emails exchanged between them and the landlord. The tenants were never able to gain possession of the rental unit and the tenants were unable to obtain a building key from the strata corporation. Finally, on March 18, 2015 the landlord communicated via email that he would not be proceeding with the tenancy and that the strata would be returning the security deposit. The tenants responded to the landlord's email by sending him their forwarding address. The tenants then proceeded to find alternative accommodation.

The tenants submit that they never received a refund of their security deposit or the rent they paid for March 2015. The tenants seek return of these amounts.

In addition, the tenants seek compensation of \$900.72 for 12 months of internet services they have or will have to pay for at their current location since the tenancy agreement they had with the landlord included internet. The tenants provided a copy of an invoice from an internet, cable, telephone provider indicating they are charged \$67.00 plus tax for "Current Monthly Services"

The tenants also seek compensation of \$13.00 for moving their BC Hydro account since electricity was to be included in rent under the tenancy agreement with the landlord. The tenants did not provide a copy of an invoice from BC Hydro.

Analysis

Section 16 of the Act provides when the rights and obligations of a tenant and landlord begin. It provides as follows:

16 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.

[reproduced as written]

The Act also precludes a landlord from taking a security deposit unless a tenancy forms.

In this case, the tenants have established that they paid a security deposit on February 27, 2015 and signed a tenancy agreement with the landlord on February 28, 2015 indicating the tenancy would commence February 28, 2015. I find the parties became bound by an oral tenancy agreement on February 27, 2015 which was recorded in writing on February 28, 2015. Pursuant to section 16 of the Act, both the landlord and tenants became bound by the terms of tenancy and conduct themselves in accordance with the Act. The tenants' obligation was to pay rent, which they did. The landlord's obligation was to provide occupation of the rental unit to the tenants, which he failed to do.

The landlord was not entitled to withhold possession or end the tenancy by way of the email he sent on March 18, 2015. Rather, for the landlord to end the tenancy would require him to serve the tenants with a Notice to End Tenancy in the approved form for one of the permissible reasons provided under the Act.

Not only did the landlord violate the Act by failing to give the tenants possession or end the tenancy in a manner required under the Act, I found the landlord's conduct especially egregious and troubling after reading the numerous text messages or emails exchanged between the parties. Upon review of the I noted that the tenants waited hours upon hours for the landlord to show up at mutually agreed upon locations, such as a parking lot, so they could obtain the building key from him. They also conveyed their desperation to him as they could no longer continue living where they had been living and they had paid rent to him for a unit they could not use. It was obvious to me that the landlord was stringing the tenants along or toying with them with no regard that they were waiting for him which I found especially cruel.

Considering the facts before me, I find the landlord to be in violation of the Act in several ways and I am satisfied that his actions caused the tenants to pay rent for a unit they could not use or enjoy. Therefore, I grant the tenants' request to recover the rent they paid for March 2015.

With respect to the security deposit, the Act provides that it is the landlord that holds the security deposit in trust for the tenants and, as such, the tenants' recourse is to seek return of the security deposit from the landlord. The landlord's emailed statement that the strata would return the security deposit is illogical and without basis given the tenancy agreement is with the landlord and the tenants paid the security deposit to the landlord, not the strata. It would appear to me the landlord has no claim against the security deposit given his egregious violations of the Act and I order it returned to the tenants.

I decline to order the landlord to compensate the tenants \$900.72 as they requested for internet services since the tenancy agreement they provided as evidence does not indicate internet was a service or facility to be provided by the landlord. Rather, the tenancy agreement indicates cablevision was to be included in rent, among other things, but not internet.

I also find the tenants failed to provide sufficient evidence to demonstrate that they incurred a cost of \$13.00 to move their hydro account and I dismiss this portion of their claim.

I award the tenants recovery of the filing fee they paid for this application.

In light of all of the above, I provide the tenants with a Monetary Order to serve and enforce upon the landlord, calculated as follows:

Return of security deposit	\$ 475.00
Return of rent paid for March 2015	950.00
Filing fee	<u>50.00</u>
Monetary Order for tenants	\$1,475.00

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,475.00 to serve and enforce upon the landlord.

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: October 21, 2015

Residential Tenancy Branch

