



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlords' agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 13, 2015. Based on the evidence of the Landlords' agent, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

Issues(s) to be Decided

1. Is there a loss or damage to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for loss or damage and if so how much?

Background and Evidence

This tenancy was to start on November 1, 2015 as a fixed term tenancy with an expiry date of October 31, 2016. The Tenants did not move into the rental unit. Rent was \$2,700.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,350.00 on October 27, 2015 and then put a stop payment on the security deposit cheque on October 28, 2015. The Landlord said the Tenants changed their minds about moving into the rental unit on October 28, 2015 and did not move into the unit.

The Landlord continued to say they were unable to rent the unit for November 1, 2015 so they lost the rent of \$2,700.00 for that month. The Landlord said they did rent the unit for December, 2015 to new tenants.

The Landlords said they are seeking the November lost rent of \$2,700.00 and to recover the filing fee for this process of \$50.00.

The Tenant said there were repair items in the rental unit that they were told after signing the tenancy agreement that they were responsible for. The Tenant said they were not comfortable with that so they changed their mind and broke the tenancy agreement by not moving in. The Tenant said they are not disputing that they signed the tenancy agreement and paid the security deposit of \$1,350.00 that later they put a stop payment on.

Analysis

Section 16 of the Act says 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 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlords proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the rent of \$2,700.00 for the month of November, 2015.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlords will receive a monetary order for the balance owing as following:

| | | |
|--------------------|-------------|-------------|
| Lost rent: | \$ 2,700.00 | |
| Recover filing fee | \$ 50.00 | |
| Balance Owing: | | \$ 2,750.00 |

Conclusion

A Monetary Order in the amount of \$2,750.00 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: June 06, 2016

Residential Tenancy Branch