



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on March 30, 2016 (the "Application").

The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): a monetary order for money owed or compensation for damage or loss; a monetary order for the return of all or part of the security deposit; and an order granting recovery of the filing fee.

The Tenants both attended the hearing. The Landlord also attended the hearing on his own behalf. All parties giving evidence provided their solemn affirmation.

The Landlord acknowledged receipt of the Tenants' Application, Notice of Hearing, and evidence upon which they intended to rely, by registered mail.

The Tenants, however, did not receive the written submissions and documentary evidence (a written tenancy agreement) submitted by the Landlord to the Residential Tenancy Branch. The Landlord testified to his belief he was not required to do so. However, I find the Tenants suffered no prejudice as they were the parties to the agreement and the parties agreed on the terms of the tenancy in their oral testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background and Evidence

The parties agreed the tenancy was to begin on March 19, 2016. Pursuant to the agreement, rent was established to be \$950.00 per month, payable on the 19th day of each month. The Tenants testified the Landlord required them to pay three months' rent (\$2,850.00), plus a security deposit (\$500.00), in advance. The Tenants testified they paid the Landlord a total of \$3,350.00.

The rental unit was a 2-bedroom, 1-bathroom apartment. According to the Tenants, the Landlord advised them he intended to travel overseas to visit family, and the Tenants would

occupy the rental unit while he was travelling. The Landlord's bedroom was to remain locked with his belongings inside, and the Tenants would have the remainder of the rental unit for their use.

However, when the Tenants moved into the rental unit, they discovered the Landlord had not left, and they experience difficulty obtaining a fob for access to the rental unit.

In addition, L.M. provided oral testimony that the rental unit was not suitable to share with the Landlord as the bathroom door did not close, and that the Landlord made sexist remarks when he saw L.M. cleaning the apartment. The Landlord acknowledged making the remark but stated it was intended as a compliment.

The Tenants also testified they lost money because they had to withdraw from their English-language school earlier than anticipated.

The Tenants vacated the rental unit on March 22, 2016.

In reply, the Landlord acknowledged he received the funds as claimed by the Tenants.

However, the Landlord provided testimony stating he wanted to travel to visit family overseas but required the Tenants' advance payments to do so. He also advised that he was unable to purchase a ticket before April 12, 2016, although the Tenants provided documentary evidence confirming earlier flights were available.

The thrust of the Landlord's oral testimony was that it was not his fault he could not vacate the rental unit as agreed.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to the return of all or part of the security deposit or pet damage deposit?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following:

I find the Landlord did not provide the Tenants with exclusive possession as was promised by the terms of the tenancy agreement.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, the Regulations or a tenancy agreement.

I find the Tenants derived no benefit from the tenancy agreement between the parties, and have suffered the losses they have claimed. Indeed, the Landlord acknowledged receipt of the Tenants' funds.

I grant the Tenants a monetary order in the amount of \$3,450.00, which consists of a monetary award for the return of the rent and the security deposit (\$3,350.00), plus recovery of the filing fee (\$100.00).

NOTE: The Residential Tenancy Branch website provides information to assist landlords and tenants to understand their rights and responsibilities before, during, and after a tenancy. Both parties are strongly encouraged to familiarize themselves with the *Residential Tenancy Act* and Regulation, and should contact an Information Officer at the Residential Tenancy Branch for further information before entering into a subsequent tenancy agreement.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary award in the amount of \$3,450.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 11, 2016

Residential Tenancy Branch