



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for unpaid rent or utilities and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 18, 2017 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlords submitted to the Residential Tenancy Branch on May 19, 2017 were sent to each Tenant, via registered mail, at the forwarding address provided by the Tenant.

The Tenant stated that the Tenants were not living at the forwarding address in May of 2017 but the documents were received by them in the summer of 2017. He stated that he is representing the female Tenant at these proceedings.

As the Tenant acknowledged receipt of the Landlords' evidence, it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to a monetary Order for unpaid rent?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on June 01, 2016;
- the tenancy was for a fixed term, the fixed term of which ended on May 31, 2017;
- the Tenant s agreed to pay monthly rent of \$1,100.00 by the first day of each month;
- the parties reached an agreement to end the tenancy prior to the end of the fixed term of the tenancy;
- during the tenancy the Tenants provided the Landlords with several post-dated rent cheques; and
- when the tenancy ended the Landlords returned several of those post-dated cheques.

The Landlord initially stated that the Landlords had found a new occupant for the unit, effective April 15, 2017. She subsequently stated that the Landlords had found a new occupant for the unit, effective March 17, 2017. The Tenant does not dispute that the Landlords found a new occupant for the unit, effective March 17, 2017.

The Landlord initially stated that rent is still due for June of 2016. She subsequently stated that rent is still due for July of 2016.

The Landlord stated that:

- in July of 2016 the Landlords inadvertently deposited the rent cheque for \$1,100.00, which was dated May 01, 2017;
- the bank placed the funds for this deposit into the Landlords' account and they assumed rent was paid for July of 2016;
- on March 21, 2017 the bank returned the cheque that was dated May 01, 2017 because it had been cashed prematurely;
- after the bank reversed this payment she realized the Landlords had deposited the incorrect cheque; and
- the Landlords have not received payment for July of 2016.

The Tenant stated that:

- after the tenancy ended he learned that the cheque dated May 01, 2017 had been cashed;
- after the tenancy ended the bank refunded the \$1,100.00 that had been paid to the Landlords on the basis of the cheque dated May 01, 2017;
- he understands the \$1,100.00 that was returned by the bank was a payment that had been applied to rent for July of 2016; and
- due to the reversed payment, the Landlords have not been paid rent for July of 2016.

The Tenant argued that the Tenants should not be required to pay rent for July of 2016 because the Landlords cashed the incorrect cheque.

The Tenant argued that the Tenants should not be required to pay for the cost of filing this Application for Dispute Resolution because the Landlords made no effort to resolve this matter prior to filing this Application.

The Landlord stated that she attempted to telephone the Tenants on several occasions and she sent several text messages in an attempt to resolve the dispute. She stated that she sent an email to the email address the Tenants used to end the tenancy, but she did not receive any response from the Tenants.

The Tenant stated that he did not receive any telephone or text messages from the Landlord and that the Tenants no longer use the email address used by the Landlords.

Analysis

On the basis of the undisputed evidence I find that a \$1,100.00 rent payment the Tenants made for one month during their tenancy was reversed by their financial institution and was returned to the Tenants. As the Landlords have not yet been paid for this month, I find that the Tenants must pay the outstanding rent of \$1,100.00 to the Landlords, pursuant to section 26 of the *Residential Tenancy Act (Act)*.

On the basis of the undisputed evidence I find that the Landlords did not receive all of the rent that was due during this tenancy because of their own error. Regardless of that error, I find that the Tenants remain obligated to pay all of the rent that was due.

As this hearing would not have been necessary if the Landlords had not inadvertently deposited the incorrect post-dated cheque, I find that the Landlords must assume responsibility of paying the fee for filing this Application for Dispute Resolution. I therefore dismiss the Landlords' application to recover the fee for filing this Application for Dispute Resolution.

In adjudicating the claim for the filing fee I was influenced by the absence of evidence that corroborates the Landlord's testimony that the Landlords attempted to resolve this dispute by telephone and text message or that refutes the Tenant's testimony that he did not receive any text or telephone messages from the Landlords regarding this issue. In adjudicating the claim for the filing fee I was further influenced by the absence of evidence that refutes the Tenant's testimony that he did not receive any emails from the

Landlords regarding this issue because the Landlord was using an email address that is no longer being used by the Tenants.

In the absence of evidence that clearly establishes that the Landlords attempted to resolve this dispute prior to filing an Application for Dispute Resolution, I cannot conclude that the Tenants should be required to pay for the cost of filing the Application.

Conclusion

The Landlords have established a monetary claim, in the amount of \$1,100.00, for unpaid rent and I grant the Landlords a monetary Order for that amount. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 20, 2017

Residential Tenancy Branch