



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INNOTECH VENTURE CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL, SS
FFT, MNDCT, MNSD

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application filed on October 27, 2017, the Landlord requested monetary compensation from the Tenants for unpaid rent as well as recovery of the filing fee. In the Tenants' Application for Dispute Resolution, filed on November 8, 2017, the Tenants requested monetary compensation from the Landlord, return of their security deposit and to recover the filing fee.

The hearing was conducted by teleconference on June 4, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

2. Are the Tenants entitled to monetary compensation from the Landlord?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee?

Background and Evidence

The Landlords' representative, A.A., testified that they own the rental property through a family corporation; he confirmed that he is the director and his spouse, S.M. is the owner of the company.

A.A. confirmed that the rental unit is a single family dwelling, with two rental units, including a one bedroom basement suite and the upstairs three bedroom suite which is the subject of this proceeding.

A.A. stated that the Tenants first contacted the Landlord through their rental ad on a popular buy and sell website in late September or early October 2017. The Tenants viewed the property in the first week of October 2017. The Tenants then came to the rental property on October 11, 2017 when they provided the security deposit of \$925.00.

The Tenants then filled out the rental application form upon which the Tenants wrote "November 1, 2017" as the start date of the tenancy. A.A. testified that they discussed the start date of the tenancy as the Landlord wanted it to begin October 15, 2017 and after some discussion the parties agreed on October 20, 2017.

In an email dated October 17, 2017 the Tenants asked to have the move in date be moved to October 26, 2017 noting that they were already paying rent at their current residence.

On October 18, 2017 the Tenants emailed the Landlord that they did not wish to move in.

A.A. stated that it was the Landlord's position that on the date of receiving the security deposit they agreed the tenancy would begin October 20, 2017.

At this time S.M. began whispering to A.A. while he was giving his testimony. I informed S.M. that as A.A. was testifying under solemn affirmation, that it was not appropriate for S.M. to attempt to coach him in any way. Despite my clear direction, S.M. continued to attempt to assist A.A. in giving his testimony.

A.A. stated that he drafted the residential tenancy agreement on October 15 or 16, which provided for an October 20, 2017 move in date, both in the body of the tenancy agreement as well as in the Addendum. That agreement was never signed.

A.A. confirmed that he continued to advertise the rental unit as it was his practice to continue advertising the rental unit even if he has a signed residential tenancy agreement.

A.A. confirmed that he also had a rental sign outside the rental unit and at one point in time someone wanted to look at the property; he stated that he let them in but informed them that he had already taken a security deposit.

The Tenant, P.L., testified as follows.

P.L. stated that she was the one who spoke to the Landlord when she saw the online ad. She confirmed that they viewed the rental unit during the first week of October 2017 but it was still under renovation as it was being painted. P.L. stated that A.A. informed the Tenants that the rental unit would be ready on October 15, 2017.

P.L. stated that there was no written agreement in terms of the October 20, 2017 move in date.

P.L. stated that A.A. then informed him that he had two other people view the property and would be coming back. A.A. told them that if they wanted to secure the rental they needed to pay the security deposit. P.L. further stated that A.A. told them that he would not consider their application for tenancy until he had received the security deposit and that as such, he requested a security deposit before he even agreed to rent to them.

P.L. stated that they informed A.A. that they could come back on October 11, 2017 to hand in the application and pay the deposit.

P.L. said that when they went back to the rental unit the Landlords showed them the renovations, accepted the cash deposit and counted it to confirm the amount. P.L. confirmed that they had written "November 1, 2017" as the start date of the tenancy on the application as they were renting another property until the end of October.

On the copy of the Application provided in evidence, "October 20, 2017" was written in red ink. P.L. testified that the Landlord did not write "October 20, 2017 in [their] presence" and that this notation was written after this meeting. P.L. confirmed that

there was no red hand writing on the document and they did not see that until they received the Landlord's evidence in support of this application.

P.L. further stated that after they left, A.A. called and spoke to her fiancée, (the other named Tenant) O.A., and told them that the agreement was for October 20, 2017, not November 1, 2017, and they would inspect on October 18, 2017.

P.L. then stated that at this time they agreed to the October 20, 2017 start date on the understanding that rent would be payable on the 20th of each month. However, shortly thereafter they discovered the Landlord was still showing the property to prospective renters. P.L. stated that on October 17, 2017, her fiancé, O.A., saw the Landlord showing the rental unit to others. P.L. also stated that A.A. then informed them that they were to pay rent from October 20, 2017 to October 31, 2017 and then pay rent again on November 1, 2017. She stated that they did not agree to that.

In an email dated October 17, 2017 the Tenants write that they would move in on the 1st. In that same email they also raised concerns about the Landlord continuing to advertise the rental unit. The Tenants wrote:

"I also wanted to make sure you are in good faith and have made up your mind to rent the place to us. And we will not be left high and dry in the last minute because of a highest bidder and put a young family of 4 into last minute distress."

[Reproduced as Written]

O.A. also testified and confirmed P.L.'s testimony. He stated that the rental ad was still on a popular buy and sell online site and the ad was still being refreshed. He stated that he was sceptical because the Landlord insisted on a deposit when they applied to rent, and before they signed the tenancy agreement. He confirmed that he then drove by the property because he was concerned it was still being advertised at which time he saw that the Landlord was continuing to show the rental unit to others.

O.A. stated that he was scared the Landlord was going to keep the deposit and then rent to others. O.A. spoke to the Landlord and asked him to explain what was happening. In response the Landlord said that until the agreement was signed, he was going to continue to show the rental unit to others. O.A. stated that he told the Landlord that if that was the way it was going to go, he was going to need his money back.

O.A. confirmed that he told the Landlord on October 17, 2017 that they didn't want to go ahead with the agreement. He further stated that as of October 17 and 18, 2017 he did

not have confidence the Landlord was going to let them move in there as he continued to actively market the rental unit.

In reply, S.M., also testified. She stated that they always take a deposit when they take an application; further she noted that the Tenants were lucky they continued to show the place because that way they were able to rent it out as of November 1, 2017.

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

A residential tenancy agreement is a contract between a landlord and a tenant setting out their rights and responsibilities with respect to a rental unit. Without such an agreement, a tenant has no right to reside in the rental unit.

The essential components of a contract are offer, acceptance and consideration. Consideration, is the money paid to perfect the contract. In most cases, the security deposit satisfies the requirement of consideration.

The definition portion of the *Residential Tenancy Act*, section 1, defines a residential tenancy agreement as follows:

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

Section 16 of the *Act* further 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.

As such, a binding agreement can be reached even in the event a tenant does not move into the rental.

That all being said, for a contract to be enforceable, there must be an agreement between the landlord and the tenant as to the terms of the tenancy, a "meeting of the minds" as to such essential terms as the date the tenancy begins, the date rent is due, the premises to be rented, and the length of the tenancy

In the case before me, I find that as of October 17, 2017 the parties had yet to agree to the terms of the tenancy, such as the date the tenancy began and the date rent was payable. Further, although the Landlord insisted on the payment of a security deposit, they continued to actively market the rental unit to others. Understandably the Tenants were concerned that they did not have a secure agreement with the Landlords as to their occupation of the rental unit.

In all the circumstances I find that the parties failed to reach a binding agreement. Consequently, the Landlords claim for monetary compensation for unpaid rent from October 20, 2017 to October 31, 2017 is dismissed.

The Landlords insisted on the payment of a security deposit when accepting the Tenants' application and prior to entering into a tenancy agreement. I find that this amounts to an "Application Fee" which is specifically prohibited by section 15 of the *Act*; for greater clarity I reproduce that section as follows:

- 5 A landlord must not charge a person anything for
 - (a) accepting an application for a tenancy,
 - (b) processing the application,
 - (c) investigating the applicant's suitability as a tenant, or
 - (d) accepting the person as a tenant.

I therefore find the Tenants are entitled to return of the **\$925.00** paid to the Landlords as a "security deposit". As the Tenants have been substantially successful, I also award them recovery of the **\$100.00** filing fee for a total of **\$1,025.00**.

Conclusion

The parties failed to reach an agreement as to the essential terms of the tenancy agreement.

The Landlords' claim for unpaid rent is dismissed.

The Tenants are entitled to recovery of the **\$925.00** paid to the Landlords as a "security deposit" in addition to the **\$100.00** filing fee. The Tenants are granted a Monetary Order in the amount of **\$1,025.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court 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 *Residential Tenancy Act*.

Dated: June 22, 2018

Residential Tenancy Branch