



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On September 13, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, to apply the security deposit to her claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Tenants testified that they received the Landlord’s documentary evidence, and that the Tenants did not submit any evidence for this hearing.

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.

Preliminary Matters

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the Landlord receive a Monetary Order for compensation for lost rent, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claim, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenants agreed on the following terms of the tenancy:

The parties agreed that the Tenants would move into the rental unit on April 15, 2018, that the tenancy would be for a one-year fixed term and that the monthly rent would be \$1,200.00. During negotiations for the tenancy, on April 1, 2018, the Tenants indicated via email, to the Landlord, that they had reviewed the Tenancy Agreement and e-transferred the Landlord \$600.00 for a security deposit and \$50.00 for a key deposit.

The Landlord testified that once she had the Tenants' agreement to rent the unit, she cancelled the other prospective tenants who were interested in the rental unit. The Landlord stated that on April 6, 2018, the Tenants called her and advised that they changed their mind and did not plan to move into the rental unit.

The Landlord stated that she immediately contacted some of the prospective tenants to advise them that the rental unit was available; however, they had already made other arrangements. The Landlord said that she had already planned to fly out of Vancouver for business and could not show any other prospective tenants the rental unit. Once she returned in mid-May, the Landlord stated she immediately advertised the rental unit and on May 14, 2018, found new tenants for June 1, 2018.

The Landlord is claiming a loss of one and a half month's rent in the amount of \$1,800.00.

The Tenants testified that they gave the Landlord as much notice as they could and that it was approximately 10 days before they were supposed to move into the rental unit.

The Tenants stated that they understood that they entered into an agreement with the Landlord; however, that they should not be responsible for the Landlord choosing to leave town and delaying her ability to mitigate her losses.

Analysis

Section 16 of the Act states that the rights and obligations of a Landlord and the Tenants under a Tenancy Agreement take effect from the date the Tenancy Agreement is entered into, whether or not the Tenants ever occupy the rental unit. I accept the undisputed testimony that the Tenants agreed to the terms of the Tenancy Agreement and forwarded a security deposit to the Landlord. As such, I find that the Tenants entered into a tenancy with the Landlord on April 1, 2018.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence from the Landlord that the Tenants failed to pay their rent for the last half of April 2018 and for May 2018 for a total of \$1,800.00, in accordance with the Tenancy Agreement and Section 26 of the Act. I find that the Landlord has established a monetary claim.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

I find that the Landlord did mitigate her losses by finding a new tenant for June 1, 2018. However, as the Landlord acknowledged that she left the city and spent a significant amount of time away on business and therefore, was unable to make efforts to find a new tenant, I do not accept the Landlord's full claim for compensation of \$1,800.00. Rather, I award the Landlord compensation of one month's rent, in the amount of \$1,200.00; as the Tenants should have, at a minimum, provided the Landlord one month's notice prior to ending the tenancy.

I find that the Landlord was successful with her Application and should be compensated for the cost of the filing fee, in the amount of \$100.00.

The Landlord has established a monetary claim, in the amount of \$1,300.00, which includes \$1,200.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security (and key) deposit in the amount of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$650.00, in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$650.00. In the event that 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 *Residential Tenancy Act*.

Dated: January 18, 2019

Residential Tenancy Branch