



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 13, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified the Application package was served on the Tenants by registered mail on September 19, 2018. The Landlord submitted Canada Post customer receipts in support. The Tenants acknowledged receipt of the Application package. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Tenants on September 24, 2018.

The Tenants provided documentary evidence in response to the Application. The Tenants testified it was served on the Landlord at the address provided on the Application by registered mail on October 19, 2019. The Landlord denied receipt, stating he was out of the country. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenants' documentary evidence is deemed to have been received on October 24, 2018.

No further issues were raised with respect to service or receipt of these documents during the hearing. The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, A.S. advised that his name was spelled incorrectly in the Application. With the agreement of the parties, and pursuant to section 64 of the *Act*, I amend the Application to reflect the correct spelling.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the fixed-term tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on June 1, 2018, and was expected to continue to May 31, 2019. During the tenancy, rent in the amount of \$3,432.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$1,600.00 and a pet damage deposit of \$1,600.00, which the Landlord holds.

The Landlord claims \$2,631.20, which is the pro-rated rent due from September 1-23, 2018 ($(\$3,432.00 / 30 \text{ days}) \times 23 \text{ days}$). The Landlord testified he was unable to re-rent the property until September 24, 2018.

The parties agreed the Tenants gave notice to end the tenancy in an email dated August 1, 2018. A copy of the email was submitted into evidence. The Tenants moved out on September 1, 2018. In the intervening period, the Tenants assisted the Landlord to obtain new tenants by placing an advertisement and arranging viewings. The Landlord testified that potential tenants referred by the Tenants contacted him and were approved. However, the arrangements fell through due to the potential tenants' financial situation.

After the Tenants vacated the rental property on September 1, 2018, the Landlord placed his own advertisement and was able to re-rent the property effective September 24, 2018.

In reply, the Tenants acknowledge some indebtedness to the Landlord but submit that the Landlord failed to minimize losses by asking the Tenants to offer the rental property at a rate of \$3,700.00 per month, and reduced it only incrementally. The Tenants also testified they did not receive a copy of the move-out condition inspection report.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 42(2) of the *Act* confirms that a tenant may not end a fixed term tenancy effective before the end of the fixed term. In other words, a tenant is not entitled to give notice to end a fixed-term tenancy before the date specified in the tenancy agreement as the end of the tenancy. In this case, the Tenants gave notice to end the tenancy on August 1, 2018, and vacated the rental property on September 1, 2018, before the end of the fixed term.

However, section 7 of the *Act* confirms that the Landlord, having received the Tenants' notice, was obligated to take reasonable steps to minimize his losses. In this case, I find it was reasonable for the Landlord to rely on the Tenants' offers of assistance, which did produce individuals who were willing to rent the property at a rate higher than what the Tenants were paying, although they were unable to enter into a tenancy agreement with the Landlord. I also find it was reasonable for the Landlord to place his own advertisement after the Tenants vacated the rental property, which ultimately resulted in the property being re-rented effective September 24, 2018.

I find the Landlord has demonstrated an entitlement to a monetary award of \$2,731.20, which is comprised of \$2,631.20 in unpaid rent and \$100.00 in recovery of the filing fee paid to make the Application.

Setting off the amount awarded to the Landlord with the amount of the deposits held, and pursuant to Policy Guideline #17(C)(1), I find the Tenants are entitled to a monetary order in the amount of \$468.80, which has been calculated as follows:

Deposits held – Landlord’s monetary award = Monetary order

\$3,200.00 - \$2,731.20 = \$468.80

Conclusion

The Tenants are granted a monetary order in the amount of \$468.80. The 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: January 29, 2019

Residential Tenancy Branch