



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants both attended the hearing. The tenants had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled hearing time of 1:30 p.m. until 1:40 p.m. to allow the landlord the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The tenants testified that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail with return receipt requested on January 4, 2019 which is deemed received by the landlord five days later, on January 9, 2019, under section 90 of the *Act*. The tenants did not have a copy of the Canada Post tracking number in support of the service of the application. However, the tenants testified that they remember sending the application by registered mail and they think they remember verifying that the landlord signed for the mailing on the Canada Post website.

The tenants testified that they sent their evidence to the landlord by registered mail on April 2, 2019. The tenants provided the registered mail tracking number for the delivery of their evidence which is referenced on the first page of the decision. Based on the undisputed testimony of the tenants, I find the tenants served the landlord with the documents pursuant to section 89 of the *Act*.

Preliminary Matter: Deposits

The tenants testified that the landlord has fully returned the security deposit and the pet damage deposit by December 31, 2018. Accordingly, the tenants' have withdrawn their application for return of the security deposit and the pet damage deposit and their application for an award of double the amount of the security deposit and the pet damage deposit. The tenants' applications for return of the security deposit and for an award in the amount of double the security deposit are dismissed pursuant to section 62(4) of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for a refund of a portion of rent paid as money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Are the tenants' entitled to reimbursement of their filing fee from the landlord pursuant to section 72?

Background and Evidence

The tenancy agreement stated that the parties had a fixed term tenancy with a commencement date of May 1, 2018 and an ending date of December 31, 2018. The rent was \$3,300.00, payable on the first day of each month and the tenants provided the landlord with post-dated rent checks for each month of the tenancy. The tenants paid a \$1,650.00 security deposit and a \$1,650.00 pet damage deposit. The security deposit and the pet damage deposit have been returned to the tenants.

The tenants testified that they only needed a temporary tenancy while their house was under construction. The tenants testified that there was verbal agreement between the parties stating that the tenants could move out early if they needed to. The tenants testified that they had informed the landlord that they were building a house and they only required this rental unit during construction. After the house was completed, the

tenants intended to move out of the rental unit and into their own house. However, the tenants did not know the exact date construction would be completed. The tenants testified that the December 31, 2018 date on the tenancy agreement was the latest date they would move out of the rental unit. The tenants testified that the landlord understood the tenants' situation and the landlord stated that he would be flexible.

However, despite this alleged verbal agreement, the tenancy agreement had a term which stated, "Any notice to terminate this tenancy must comply with the applicable legislation of the Province of British Columbia (the "Act")."

The tenants testified that they notified the landlord by text on October 18, 2018 that they would move out of the property by December 15, 2018. The tenants testified that the landlord mixed up the tenants' post-dated rent checks and he deposited both the November 2018 and the December 2018 rent checks in the November 2018.

The tenants testified that they attempted to co-ordinate a condition inspection report on move-out with the landlord but the landlord was not co-operative. The tenants testified that they moved out of the rental unit on December 15, 2018 without completing the condition inspection report.

The tenants have requested reimbursement of one-half of the December 2018 rent since they moved out on December 15, 2018. The parties exchanged numerous text messages discussing this issue and the return of the deposits. The tenants referred to a text exchange on December 10, 2018 wherein the tenants requested return of the deposits and reimbursement of the one-half of the December rent. The landlord responded by text stating they will do a walk through later this week and he will "process monies following." The tenants argued that this was an acknowledgment by the landlord that he would reimburse one-half of the December rent. However, in other text messages the landlord explicitly stated that there was never an agreement to reimburse any portion of the December 2018 rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this matter the parties had a fixed term tenancy agreement which stated an ending date of December 31, 2018. However, the tenants seek to end the tenancy early on December 15, 2018. The tenancy agreement had a term which stated, "Any notice to terminate this tenancy must comply with the applicable legislation of the Province of British Columbia (the "Act")." Accordingly, the tenants' notice to end tenancy must comply with the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot give notice to end the tenancy "...earlier than the date specified in the tenancy agreement as the end of the tenancy." Accordingly, the tenants could not give valid notice to end the tenancy prior to December 31, 2018.

The tenants argued that they had a verbal agreement to permit an earlier termination of the contract if their house construction ended earlier. However, I find that the tenants have failed to satisfy their burden of proof to establish the existence of such a verbal agreement. The tenants have provided no evidence to corroborate this claim and the written tenancy agreement clearly states otherwise. I find that the tenancy agreement had an ending date of December 31, 2018 and the tenants could not give effective notice for an earlier ending date pursuant to Section 45(2)(b).

In addition, I find that the landlord did not acknowledge an agreement to reimburse a portion of the December 2018 rent in the text messages. I find that the statement that the landlord will "process the monies" is a general statement which does not specify the amount the landlord is willing deliver to the tenants. I find that this is not an admission that the landlord has agreed to return a portion of the December 2018 rent. Furthermore, from my review of the entirety of the text messages, I find that the parties did not reach an agreement regarding the reimbursement of the December 2018 rent.

Accordingly, I find that tenants have failed to provide sufficient evidence to establish the existence of a contractual obligation on the landlord to reimburse one-half the December 2018 rent. Accordingly, the tenants' application for reimbursement of the December 2018 rent is dismissed.

Since the tenants have not prevailed in this matter, I dismiss their application for reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The tenants' request for reimbursement of the filing fee is dismissed.

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: April 25, 2019

Residential Tenancy Branch