



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receipt of the tenant's evidence. The landlord did not submit evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and recovery of the filing fee?

Background and Evidence

The tenant submitted that she saw the rental unit listed on a classified website, showing that it was for sale and rent. The tenant inquired of the landlord and was informed that if she found a tenant, she would rent and not sell.

According to the tenant, her husband viewed the property and in text message communication with the landlord, they discussed a 1 year lease, beginning on May 1, 2019, for monthly rent of \$2,450.00, with an intention to rent for 2-3 years. The tenant said that they also agreed to pay the landlord a security deposit of \$1,225.00 on April 1, 2019, a pet damage deposit of \$1,225.00 on April 15th, and the first month's rent on May 1, 2019.

The tenant said she sent the security deposit of \$1,225.00 on April 1, 2019, and had confirmation that it was deposited into the landlord's account on the same day.

The tenant submitted that she gave notice to her current landlord that she and her family were moving out, by the end of April 2019.

The tenant submitted that on April 15, 2019, the landlord sent a text message stating that she was selling the property and then returned the tenant's security deposit as she did not intend to rent to the tenant. The tenant told the landlord how upset she was as they had given their current landlord notice they were vacating at the end of April 2019, and had no place to move into on May 1, 2019. The tenant pointed out that they lived in another province and had lined up a move.

The tenant submitted that she later found out the property was listed for sale on April 2, 2019.

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. U-haul truck rental	\$379.19
2. Westjet flight	\$278.38

3. Westjet flight	\$264.60
4. Westjet flight	\$200.68
5. Land Title Search	\$12.42
6. Printing	\$25.00
7. USB for document storage	\$18.89
8. Registered mail costs	\$36.68
9. Transportation costs, taxis	\$107.29
10. Uhaul lock	\$13.93
11. Travel food	\$33.99
12. Hotel costs	\$113.00
13. Fuel costs	\$240.06
14. Storage Unit	\$210.00
TOTAL	\$1,934.56

The tenant also submitted a claim for a month's rent of \$2,450.00 as the landlord failed to end the tenancy in the proper manner as required under the Act, that is with a Two Month Notice to End Tenancy for Landlord's Use, and \$1,000.00 for emotional distress of her 79 year old mother-in-law, as she is unable to sleep due to not knowing where she will be living with the tenant and her husband.

In support of the monetary claim listed above, the tenant said it was necessary to make airline reservations for her mother-in-law and a friend who was going to fly to their new location to help move. After the landlord cancelled the tenancy, the tenant had to cancel the flights, but still incurred an additional expense of booking a new flight for her mother-in-law.

The tenant submitted that as the landlord cancelled the tenancy and that they still had to move out of her former rental unit, she was entitled to travel expenses, such as fuel, food, and truck rental.

The tenant submitted she was entitled to storage costs as they were not able to move into the rental unit as planned.

The tenant submitted she was entitled to the title search, printing, storage device costs, and taxi costs to the library as she had to research to make sure of the identity and location of the landlord.

The tenant confirmed that they did move and stayed with a friend in the area until they secured a new rental unit; however, they did have to stay in a hotel for a night and had to store their belongings on a short term.

Landlord's response-

The landlord submitted that after agreeing to the tenancy and accepting the security deposit, she decided not to rent to the tenant, as there were some red flags. She said that the tenant was supposed to pay the pet damage deposit on April 15, 2019, but the tenant asked for an extension. The landlord submitted that she did not accept the tenant's reason for asking for an extension, which was there was a payroll issue.

The landlord submitted that she then started having doubts as to whether or not the tenant could afford the rent, and she was not in a financial position to lose even one month's rent revenue.

The landlord submitted that her mortgage broker advised her to sell the property, resulting in her listing the property sometime in April 2019.

The landlord confirmed that she checked for and then received a good reference about the tenant, but was not sure of their financial position.

Analysis

Based on the relevant evidence and a balance of probabilities, I find as follows:

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.

One month's rent compensation-

Under section 16 of the Act, 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.

In this case, the evidence is clear that the landlord and the tenant entered into a tenancy agreement, for a monthly rent of \$2,450.00, as the landlord accepted a security deposit on April 1, 2019, and as she stated at the hearing her original intent was to rent

to the tenant, beginning May 1, 2019. I therefore find the landlord and the tenant entered into a valid, enforceable tenancy agreement and that the landlord was responsible for providing the rental unit on May 1, 2019, according to the terms of the tenancy agreement, but failed to do so.

The evidence is that the landlord notified the tenant on the 15th day of April 2019, that she was cancelling the tenancy agreement.

Residential Tenancy Branch Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law. If a tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of a monetary award for the portion of the premises or property affected.

I agree with the Policy Guideline and find that the landlord deprived the tenant of the rental unit as contracted for which required the tenant to find another place to stay on an emergency basis and into the first month of the tenancy which never began, as she had given notice to her previous landlord.

I find it reasonable that due to the landlord's breach of the Act and tenancy agreement, the tenant is entitled to a monetary compensation in the amount of \$2,450.00, representing the rent for the month of May 2019.

Emotional distress-

As to the tenant's claim for \$1,000.00 for emotional, a claim in tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find this claim to rise to that requirement as the tenant did not submit doctor or psychological statements or prescription records.

I therefore dismiss the tenant's claim for \$1,000.00 for pain and suffering.

As to the tenant's remaining claims, under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-

complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the tenant has the burden of proof to substantiate her claim on a balance of probabilities.

Hotel and storage-

As to the tenant's claim for a night of accommodation and storage, I would likely have granted this request had those expenses been incurred in late April or the beginning of May 2019, as the rental unit was not available on May 1, 2019, as bargained for.

In reviewing the receipts provided by the tenant, however, the hotel expense was May 16, 2019, and the storage was for May 22, 2019. This leads me to conclude that the tenant had secured alternate accommodation and began her move to her new location.

I therefore do not find there is a basis under the Act to obligate the landlord to bear the costs of the tenant's move and dismiss her claim for \$113.00 for hotel and \$210.00 for a storage unit.

U-Haul, lock, and transportation costs-

I likewise do not find there is basis under the Act to obligate the landlord to bear the costs of the tenant's move and transportation, as these are choices the tenant made on how to facilitate her moving.

I find the tenant has failed to provide sufficient evidence to hold the landlord responsible under the Act for choices made by the tenant.

I dismiss the tenant's claim for a U-Haul truck, lock for the truck, fuel, and travel food.

Land title search, printing, registered mail costs, USB to store documents, fuel to library-

I find these are costs that the tenant chose in how she proceeded with her application. The Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee.

I therefore dismiss the tenant's claim for a land title search, printing, registered mail costs, USB to store documents, fuel to library.

Air flights-

I find no basis under the Act to obligate a landlord or tenant to compensate the other for choosing to fly friends or family members to their new location.

I dismiss the tenant's claim for airline travel.

As I have found at least partial merit with the tenant's application, I grant the tenant recovery of her filing fee of \$100.00.

Due to the above, I find the landlord is entitled to a monetary award of \$2,550.00, comprised of \$2,450.00 as compensation of the rental unit for the month of May 2019, as described above, and the filing fee paid for this application in the amount of \$100.00.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2,550.00.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation is partially successful.

The tenant is granted monetary award of \$2,550.00 and is granted a monetary order in that amount.

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: July 11, 2019

Residential Tenancy Branch