



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX PROFESSIONAL RENTAL
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$200.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord was represented by its property manager. Both tenants attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord's property manager testified that the each tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on May 27, 2019. She provided two Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision.

The tenants testified that they did not receive the landlord's notice of dispute resolution proceeding or supporting evidence. They testified that they were on vacation during the last week of May, and upon their return they saw a notice from Canada Post to retrieve a package sent by registered mail, but that by the time they went to the post office, the package was no longer available for pickup.

However, the tenants testified that they wanted to proceed with the hearing, as based on past communication with the landlord's agent, they knew the subject matter of this application.

As such, I find that the tenants were deemed served with the landlord's notice of dispute resolution proceeding and supporting evidence package on June 2, five days after the landlord's agent mailed it, in accordance with sections 88, 89, and 90 of the Act.

The tenants testified that they did not know they needed to serve the landlord with copies of the evidence they intended to rely on at the hearing. They did, however, upload the evidence to the Residential Tenancy Branch ("**RTB**") evidence intake system.

The landlord's property manager stated that she had some emails from the tenants to the landlord at hand (she understood that these emails were included in those documents uploaded by the tenants.) Rule of Procedure 3.15 requires that a respondent serve the applicant with all evidence they intend on relying at the hearing seven days in advance of the hearing.

Accordingly, I order that all evidence the tenant uploaded to the RTB is not admissible at this hearing. However, any emails that the tenants refer to that have been uploaded, and that the landlord's property manager also confirms she has in her possession, will be re-admitted into evidence.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order in the amount of \$200.00; and
- 2) recover its filing fee from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting November 1, 2019. Monthly rent is \$1,495.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$747.50.

At the outset of the hearing the landlord's property manager indicated that, should the landlord be successful, it did not want an order that they be permitted to deduct any amount they are entitled to from the security deposit. Rather, the landlord would prefer a monetary order.

The rental unit is located in a strata property. The landlord's property manager testified that, pursuant to the strata bylaws, the tenants were obligated to pay a move-in fee of \$200.00. She testified that the tenants failed to pay this amount. The tenants confirm that they have paid no such fee to date.

In support of its claim, the landlord uploaded a copy of the tenancy agreement which include the following clauses:

26. Strata Bylaws and Rules

If the rental premises or residential property are designated as a Strata Corporation, the Tenant acknowledges that the residential property is a Strata Titled development with individual Strata Lots owned by separate parties and that the residential property will be operated in accordance with the provisions of both the B.C. Residential Tenancy Act and other applicable legislation. The Tenant agrees to abide by all the Rules & Regulations and Bylaws of the Strata Corporation of the residential property as established from time to time and agrees to execute and deliver to the Landlord a Tenant Undertaking (The Property Strata Act, Form "K") attached hereto.

[emphasis added]

32 Move In/Out Fee

The tenant agrees to pay any move in/out fee. They are also responsible for booking the elevator and any deposits or fees required for that.

The landlord also uploaded an account statement from the strata corporation dated January 23, 2019 to the landlord which shows a charge of \$200.00 for the tenants move-in.

The tenants did not deny that the tenancy agreement obligated them to pay the move-in fee. Rather, the tenants testified that the property manager told them that they would not have to pay a move-in fee. They did not produce any documentary evidence (email, text message, or letter) in support of this assertion.

Additionally, the tenants testified that they were without a working shower for 40 days and have yet to receive adequate compensation for such a loss. Tenant LF testified that he was “holding [the move-in fee] hostage” so he would have leverage in negotiations regarding compensation for the loss of the use of the shower.

The tenants have not filed an application for dispute resolution to address any issue with the rental unit shower.

The landlord’s property manager argued that the shower issue is not the subject of this hearing, and any alleged stoppage of services should not be considered in determining the landlord’s entitlement to recover the move-in fee.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

In this case, the landlord bears the onus of proof.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish

that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The landlord alleges that, by failing to pay the move-in fee, the tenants have breached the tenancy agreement. I find that the sections 26 and 32 of the tenancy agreement (reproduced above) obligate the tenants to pay the move in fee. All parties agree that the tenants have not done so. This satisfies the landlord's evidentiary burden of proving that the tenants failed to comply with the tenancy agreement. I find that the tenants have failed to tender sufficient evidence that they were exempted from paying the move-in fee by a previous property manager.

As such, I find that the tenants breached the tenancy agreement by failing to pay the move-in fee.

Based on the account statement sent by the strata corporation to the landlord for \$200.00, I find that the landlord suffered damage (in the amount of \$200.00) as the result of the tenant's non-compliance. Based on this same account statement, I find that the landlord has proved the amount of the damage suffered.

I find that there is no requirement under in the tenancy agreement for the landlord to notify the tenants of any strata fees owed. I find that the tenants had, or ought to have had, known that they were required to pay the move-in fees, as this requirement is explicitly stated at section 32 of the tenancy agreement.

There is no application before me regarding the tenants' alleged loss related to a non-functioning shower in the rental unit. As such, I do not accept any argument that the tenants suffered damages from this alleged loss ought to be offset against the move-in fee that is owed to the landlord.

The Act does not permit a tenant from holding a funds owing to the landlord "hostage" to gain leverage in a future dispute.

The tenants' proper course of action to resolve the dispute regarding the shower is for them to file their own application for dispute resolution with the Residential Tenancy Branch and participate in a hearing before an arbitrator.

As such, I grant the landlord's application, and award them as follows:

| | |
|--------------|-----------------|
| Move-in Fee | \$200.00 |
| Filing Fee | \$100.00 |
| Total | \$300.00 |

Conclusion

Pursuant to section(s) 67 and 72 of the Act, I order that the tenants pay the landlord \$300.00. This order may be filed and enforced in the Provincial Court of British Columbia.

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: September 04, 2019

Residential Tenancy Branch