



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 3, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants' Representative C.K. attended the hearing at the appointed date and time and provided affirmed testimony.

C.K. testified that the Tenants' Application and documentary evidence package was served to the Landlord by registered mail on July 11, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord confirmed that he did not submit any documentary evidence in preparation for the hearing.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

2. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; a periodic tenancy was formed on May 11, 2019 in which the Tenants had agreed to move into the rental unit on July 1, 2019. The Tenants prepaid the first month on rent in the amount of \$1,400.00 as well as a security deposit to the Landlord in the amount of \$700.00.

C.K. stated that shortly after forming the tenancy agreement, the Tenants decided to end the tenancy before taking possession of the rental unit. C.K. stated the Tenants provided the Landlord with their written notice to end tenancy on May 23, 2019 indicating that they would not be moving into the rental unit on July 1, 2019.

C.K. stated that the Landlord accepted the Tenants' notice to end tenancy and returned the Tenants' security deposit, as well as \$1,100.00 of the \$1,400.00 rent. C.K. stated that the Tenants have sent the Landlord several requests for the remaining portion of the first month rent in the amount of \$300.00, however, the Landlord has not yet returned this amount.

In response, the Landlord confirmed that he received the Tenants' notice to end tenancy on May 26, 2016. The Landlord stated that he immediately advertised the rental unit and found a new occupant to rent the rental unit. The Landlord stated that the new occupant did not take possession of the rental unit until July 15, 2019. As such, the Landlord feels as though he was entitled to retain a portion of the Tenants' rent in the amount of \$300.00 to compensate him for the loss of rent as a result of the Tenants breaking the contract.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

Section 16 of the Act states that 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.

Section 45 (1) of the *Act*, a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept that the parties agreed that they entered into a periodic tenancy on May 11, 2019 in which the Tenants were meant to move into the rental unit on July 1, 2019. The Tenants prepaid the security deposit in the amount of \$700.00, as well as the first month of rent in the amount of \$1,400.00. I accept that the Tenants provided the Landlord with their written notice to end tenancy on May 23, 2019, as they no longer wished to move into the rental unit on July 1, 2019.

I accept that the Landlord received the Tenants' notice to end tenancy on May 26, 2019 and has returned the Tenants' security deposit in full, as well as \$1,100.00 of the first month's rent to the Tenants.

I find that the Tenants provided the Landlord with proper written notice to end the periodic tenancy, pursuant to Section 45(1) of the *Act*. As such, I find that the Tenants are entitled to the full return of the prepaid first month of rent.

In light of the above, I find that the Tenants have established an entitlement to compensation for the remaining balance of the unreturned rent from the Landlord in the amount of \$300.00.

Having been successful, I find the Tenants are also entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are granted a monetary order in the amount of \$400.00.

Conclusion

The Tenants provided proper notice to end tenancy and are therefore entitled to the full return of their prepaid first month of rent. The Tenants are granted a monetary order in the amount of \$400.00. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: October 16, 2019

Residential Tenancy Branch