



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

In this dispute, the tenant sought compensation against their former landlord, pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on February 18, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 7, 2020. The tenant’s legal counsel along with the landlord attended the hearing at 1:30 PM. Counsel explained that they had no particulars on the matter, and they had only been retained on March 10, 2020; the tenant was purportedly out of country and unable to attend due to the pandemic. He asked for an adjournment. At 1:39 PM, the tenant called into the hearing and, given the landlord’s preference in proceeding, I advised that I would not be granting an adjournment. Counsel took his leave at 1:40 PM, and the hearing proceeded with the tenant and the landlord.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issue of this application. As such, not all of the parties’ testimony may necessarily be reproduced.

Issue

Is the tenant entitled to compensation in the amount of \$790.00?

Background and Evidence

The facts of this dispute are, with the exception of one matter, relatively straightforward.

A tenancy began on September 1, 2019 and ended on September 30, 2019. The tenancy was between the tenant and two co-tenants (who are not named on the

application), and the landlord. There was a written tenancy agreement, which was submitted into evidence. Monthly rent was \$2,100.00, due on the first of the month. There was a security deposit of \$1,050.00.

On September 30, 2019, the parties signed a Mutual Agreement to End a Tenancy to end the tenancy on that date, at 1:00 PM. A copy of this mutual agreement was submitted into evidence.

Along with the tenancy agreement was a written addendum, which was signed by the landlord and the tenants on June 26, 2019 and July 1, 2019, respectively. Clause 8 of the addendum states the following:

Tenants agree to pay \$2100 for a month vacancy fee before move in. If the tenants continuously rent the house until August 31, 2020, the landlord will return \$2100 back to tenants or use as the rent for August, 2020.

The tenant claims that the landlord did not return his portion of this “month vacancy fee” after the tenancy ended. His portion is \$790.00. He argued that, to his understanding, the Act does not permit the landlord to charge this type of fee.

The landlord testified that the tenants had agreed to the “month vacancy fee,” and that they agreed should they end the tenancy before August 2020 they would not be entitled to a refund of this money. Further, the landlord confirmed that this fee was separate from the security deposit amount. She reiterated that, contrary to the tenant’s testimony, “I never promised to return the money to him.”

Analysis

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. The central issue in this case is whether the landlord is entitled to retain the tenant’s portion of the “month vacancy fee.”

The Act permits a landlord to collect a security deposit. Under that Act, the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a tenancy. The Act contains a definition of “security deposit”, which also contains exclusions. “Security deposit” is defined in section 1 of the Act as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

As a result of the definition of a security deposit in the Act and the *Residential Tenancy Regulation*, a "month vacancy fee" (essentially, the last month's rent, which may or may not have been applied to the rent had the tenants stayed until August 2020) – irrespective of any agreement between a landlord or a tenant – would be, or form part of, a security deposit.

Section 19(1) of the Act prohibits a landlord from collecting a security deposit that exceeds one-half of one month's rent. If one or more of the above payments, together with other monies paid, exceeds one-half of one month's rent then the remedies afforded by the Act are available to a tenant. In this case, the landlord not only collected a security deposit in the amount of \$1,050.00 (which is half of the month's rent), she also collected an additional amount of \$2,100.00, which together exceeds the amount of monthly rent.

While the landlord stated that the tenants agreed to this possible retention of the \$2,100.00, and while the agreement was in fact put in writing, this agreement was done in contravention of the Act. Section 5(2) of the Act states that "[a]ny attempt to avoid or contract out of this Act or the regulations is of no effect."

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his case that the agreement between the landlord and the tenants was, and is, of no force or effect, and that she had no legal right to require, and collect, the \$2,100.00 from the tenants.

Section 67 of the Act states that "without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party."

Pursuant to section 67 of the Act, I find that the tenant is entitled to compensation in the amount of \$790.00. A monetary order in the amount of \$790.00 is issued in conjunction with this decision.

Conclusion

The application is granted.

I grant the tenant a monetary order in the amount of \$790.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, 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 Act.

Dated: April 7, 2020

Residential Tenancy Branch