



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

In this dispute, the tenants seek an order that the landlord comply with the *Residential Tenancy Act* (the “Act”), the regulations, or the tenancy agreement, pursuant to section 62(3) of the Act. Specifically, they seek an order compelling the landlord to return their security deposit and a month of rent for a rental unit that was never provided to them.

The tenants applied for dispute resolution on February 20, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 30, 2020. The tenants attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses; the landlord did not attend.

Regarding the Notice of Dispute Resolution Proceeding package, the tenant (E.B.) confirmed that she received a copy of the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch by email on March 4, 2020. She (1) emailed a copy of the Notice of Dispute Resolution Proceeding (“NDR”) to the landlord on March 4, 2020, (2) texted the landlord the information regarding the dispute, on March 4, 2020, (3) sent the landlord a Facebook message regarding the hearing, on March 4, 2020, (4) placed a copy of the NDR in the landlord’s mailbox on March 6, 2020, and (5) mailed (by regular mail) a copy of the NDR to the landlord on March 6, 2020.

Based on the above testimony, I am satisfied and do find, pursuant to sections 71(2)(b) and 89(1)(e) of the Act, that the tenants have sufficiently served the landlord with the Notice of Dispute Resolution Proceeding package.

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.

Issue

Are the tenants entitled to an order requiring the landlord to return a security deposit and rent in the total amount of \$3,600.00?

Background and Evidence

The tenants testified that they signed a tenancy agreement on January 23, 2020 for a tenancy that was to begin on February 1, 2020. It was to be a two-year fixed-term tenancy. A copy of the signed page of the tenancy agreement was submitted into evidence. They explained that the landlord did not provide a copy of the entire tenancy agreement, but they photographed the last page of the tenancy agreement with the parties' signatures. The tenants paid the landlord a security deposit of \$1,200.00 and rent for February 2020 in the amount of \$2,400.00, for a total of \$3,600.00.

On January 30, 2020, the landlord sent a text message to the tenants advising that due to a recent inspection of the rental unit (a house) which found mold, the tenants could not move in on February 1, 2020. Instead, the tenants should be able to move in on February 15, 2020.

On January 31 the tenants asked the landlord for their rent (\$2,400.00) back, so that they could pay their current landlord the rent for February. The landlord said that they would, but despite numerous follow-up texts, they never returned the rent or the security deposit, which the tenants eventually asked for as well. While the landlord said that she returned the money by e-transfer, the tenants testified they never received anything.

Copies of text message conversations between the parties were submitted into evidence, and relevant excerpts are as follows: In one conversation of February 16, the tenant (B.) writes: "Good morning can you please send the money?" The landlord responds, "Just woke up will do ok sorry hun get to it asap".

Two days later, on February 18, the tenant asks the landlord, "Good morning, I still have not received anything... No e-transfer, No confirmation." Four hours later the landlord responds, "Because we run businesses okay . Please don't ever threaten me again with the policy okay .. if u really want call them .. I'm gonna [truncated remainder]

On February 19, 2020, the tenant sends a few more messages to the landlord, none of which appeared to be answered. A few days later (February 21 and February 22, 2020), the following exchange occurs (reproduced as written):

- Tenant: Hello, can we get together today please?
- Landlord: U still haven't received it .. I thought u got it cause u haven't bothered me
- Landlord: Also, I have a appointment at bank at 7 tinght. I'll pull out statement and then ifits not out . I will pull the money out and then it t...[truncated]
- Tenant: I wasn't gonna rush you after you had a flight. Just figured I would give you a couple of days. Thank very much
- Tenant: Hey how's it going? Any idea when we can meet up?
[next morning on February 22]
- Tenant: If it's easier for you, you can just deposit the \$3600 into my bank account. I am with Scotiabank. [banking information provided]

There was no further response from the landlord, who has neither returned the money or contacted the tenants regarding when they might take possession of the rental unit.

However, and more recently, the tenants drove by the rental unit on Monday, April 20, 2020, only to discover that “the place had been cleaned up” and that there appeared to be a new family residing in the house.

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.

At the outset, while the tenants paid a security deposit and the first month's rent totalling \$3,600.00 to the landlord, and while the parties entered into the tenancy agreement on January 23, 2020, the tenants were never given possession of the rental unit. However, as section 16 of the Act states:

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.

The landlord therefore had certain obligations under the Act, including those found in section 28(c) of the Act which entitles a tenant to “exclusive possession of the rental unit.” In this dispute, the landlord simply took the tenants’ money but never actually let them move into the rental unit.

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 tenants have met the onus of proving their claim for an order that the landlord comply with the Act, the regulations, or the tenancy agreement.

Section 62(3) of the Act states that an arbitrator may make “any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

In this case, given that there is another family (with a small child) now residing in the rental unit, it would be unsuitable for me to order the landlord to give the tenants exclusive possession of the rental unit. But, as pleaded by the tenants, they seek an order that the landlord return the full \$3,600.00 that was unlawfully retained. I grant this order as requested and issue a monetary order in conjunction with this decision.

Conclusion

I order that the landlord immediately return \$3,600.00 to the tenants.

I grant the tenants a monetary order in the amount of \$3,600.00, which must be served on the landlord. Should the landlord fail to comply with my order, the monetary 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 30, 2020

Residential Tenancy Branch