



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 Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act in the amount of \$1,000.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, R.S., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?

- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on October 15, 2018, and ran until March 15, 2019, with a monthly rent of \$2,000.00, due to the Landlord on the 15th day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit. They agreed that the Tenants vacated the rental unit on March 14, 2019, and that the Tenants did not provide the Landlord with their forwarding address; however, the Parties agreed that the Landlord returned the Tenants' \$1,000.00 security deposit to them.

The Tenant said that he paid the Landlord \$12,000.00 for five months' rent and the \$1,000.00 security deposit. The Tenant said that this amount also included an extra \$1,000.00 that he said the Landlord required of them "...to hold the property open for me," said the Tenant, which he said should be returned to the Tenants.

The Landlord said:

The extra \$1,000.00 was for rent from September to October. My original rental was for September 15th. They took the keys and the garage fob on September 5. Essentially, it was rent for September, although I did not put it in the agreement. For house insurance reasons, I put the tenancy as starting as of the 15th of October.

I was leaving the country on September 7th. Originally, I was asking for rent of \$2,200.00 per month. They were building a property in Victoria, and they seemed like ideal tenants. They weren't able to take property until October 15. I said I would lower the rent to \$2,000.00 per month. We did the walk-through, and I discounted the first months' rent; technically they had taken over the property – they had the keys to the property - and they agreed to pay \$1,000.00 to secure the agreement.

The Tenant said:

We moved in on October 17th, because we did not occupy her place until the sale of our home in [another city] was completed on the 17th of October. On September 5th, I visited the house to give her cheques. I gave her six cheques for \$2,000.00 each. She said the first cheque would be cashed on September 6th.

That first \$2,000.00 in September wasn't for a hold, but was for the security deposit and the first month. It was October 15: \$1,000.00 for the security deposit and \$1,000.00 for rent starting on October 15. She knew I had no intention to move down to [her city]. I gave up my house on October 16, which I had just sold.

The Landlord submitted texts and emails exchanged between the Parties, including an email dated February 20, 2019, in which the Tenants wrote:

Hi [K.], I have just re read our contract with you and I realized that I gave you cheque's to the value of six thousand dollars. It would appear that I give you \$1000 more than I should have. We will have stayed in you home for 5 months (October 15 to March 15) at \$2000 per month total \$10,000 dollars, there was also a \$1000 dollar deposit. You have cashed cheque's to the value of 12 thousand which means I have overpaid you \$1000. As you know we will be heading south on the 15 March and as yet you have not indicated how the handover is to take place or when. Will you be here for the handover or will there be someone to represent you? How do you propose to return the overpayment and the deposit?

[reproduced as written]

The Landlord's response to this email was as follows:

[R.].

The original lease and listing for my house was \$2200 the 15th Sept till Marc 15th.

You wanted the pl from Nov 1st – June1st

We agreed to \$1000 for the 1st month which was Sept when I left the country and \$2000 a month starting oct 15th which you signed and dated cheque's for.

I cashed a cheque Sept 6th which was the day you took the keys and had full access to my home. \$1000 damage deposit and the \$1000 for Sept-Oct. The agreement was dated for the 15th of Oct because we had an understanding with the closing dates of your home you would not be [in the city] till the 15th of Oct which required an adjustment to my current insurance policy which the dates reflected.

Sincerely,

[reproduced as written]

On February 21, 2019, the Tenant replied:

[K.] this is the agreement that you made with me. It quite clearly states that the rental is to start on the 15 October and end on the 15 March at \$2000 per month the first payment due on the 15th October. If you disagree with my interpretation of the rental terms then you should speak to your lawyer. I will be consulting mine today.

[reproduced as written]

On February 24, 2019, the Landlord emailed the Tenants, stating:

[R.],

I find it very strange that 6 months after you writing the cheque's and your lease is coming to an end your claiming to be overcharged? When you wrote the cheque's with full understanding and agreement.

[reproduced as written]

The Parties submitted a copy of the tenancy agreement, which states that the fixed term tenancy starts on October 15, 2018 and ends on March 15, 2019. The rent is set out as \$2,000.00 per month due on the 15th day of each month. It states that the Tenants are required to pay the Landlord a security deposit of \$1,000.00 and no pet damage deposit. It was executed by the Parties on September 5, 2018.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The parol evidence rule is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the existing contract.

The Landlord said that the extra \$1,000.00 was rent starting on September 15, 2018; however, this would have been for rent from September 15 to October 14, 2018. It is not clear why the Landlord would charge half a month's rent for this full month, since she had already dropped the rent by \$200.00 per month from what she initially intended to charge. The Landlord also said the purpose of the additional \$1,000.00 was because "...they agreed to pay \$1,000.00 to secure the agreement." However, I find that executing the tenancy agreement and providing the Landlord with post-dated cheques of \$12,000.00 is legally sufficient to "secure the agreement".

Further, the Landlord said she did not refer to this amount in the tenancy agreement, because of insurance reasons relating to leaving a property empty. The Landlord's expressed willingness to falsify the tenancy agreement for a possible insurance claim raises questions in my mind about the reliability of the Landlord's evidence before me.

When I consider all the evidence before me, overall, I find that the Landlord's version of events does not ring true. The Landlord said that the \$1,000.00 was rent for September 15 to October 14, 2018, *and/or* that it was to secure the agreement. I find that both of these explanations have holes. First, why would the Landlord charge only \$1,000.00 for September 15th to October 14th, when the agreed upon rent was \$2,000.00 per month, and the Landlord had already discounted the rent by \$200.00 per month? Further, why would the Tenants need to pay \$1,000.00 to "secure the agreement"? Signing a contract secures the arrangement or the agreement between the Parties.

I find that the Landlord gave the Tenants keys and a garage fob on September 5, 2018, because she was leaving the country on September 7, 2018, not because the tenancy started in September.

I find that the tenancy agreement is consistent with the Tenants' version of events and the agreement that I find the Parties made. I find there is insufficient documentary or testimonial evidence to support the Landlord's version of events, and I find the Tenants' accounting of the Parties' agreement to be more reliable on a balance of probabilities.

I find it more likely than not that the Tenants miscalculated the amount they had to pay the Landlord for the tenancy and that they overpaid her by \$1,000.00. I, therefore, find that the Tenants are entitled to be reimbursed for this amount. I award the Tenants with recovery of this \$1,000.00 overpayment from the Landlord, pursuant to section 67 of the Act. I also award the Tenants with recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act for a total monetary order of **\$1,100.00** from the Landlord.

Conclusion

The Tenants are successful in their claim for reimbursement of \$1,000.00 from the Landlord, as the Landlord did not provide sufficient evidence to support her version of events in this regard. The Tenants are also awarded recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$1,100.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 24, 2020

Residential Tenancy Branch