



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential BC Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, FFT, MNDCT**

Introduction

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

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee from the landlord pursuant to section 72; and
- A monetary award for damages and loss pursuant to section 67.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal applicant was represented by two family members who were acting as their agent (the "tenant"). The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find each party served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlord?

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties signed a written tenancy agreement for a fixed-term tenancy to begin on April 1, 2020. The monthly rent is \$975.00 payable on the first of each month. The tenant now resides in the rental unit.

The tenant submits that they were delayed in obtaining keys to the suite and moving in due to the landlord's circumstances. The tenant submits that they were informed by an agent of the landlord that the rental unit required some repairs and during this time they could not take possession of the rental suite. The tenant says that there was a verbal agreement with the landlord's agent that they would not be obligated to pay rent while they were not residing in the rental unit. The tenant did not move in to the rental unit until June, 2020.

The tenant submits that the rent for April and May, 2020 were automatically deducted from their bank in accordance with the tenancy agreement and pre-authorized payment they had set up. The tenant now seeks a monetary award in the amount of \$1,950.00 the equivalent of rent for April and May, 2020 that was paid for this tenancy.

The landlord submits that there was no agreement with the tenant that rent would be waived. The landlord submits that any maintenance issue that may have been present in the suite were not so significant that they would void the rental agreement or prevent them from offering the rental suite for occupation. The landlord says that there is no record of an agreement to waive rent in any notes, correspondence or documentary materials kept by the building manager. The landlord submits that such an agreement is outside of normal operations and it would be documented in some form if such an agreement existed.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus to prove their claim on a balance of probabilities lies with the applicant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has not met their evidentiary onus on a balance of probabilities to establish the basis for a monetary claim. While I accept the tenant's testimony that they did not move in to the rental unit for two months after the date indicated on the written tenancy agreement, I find little evidence that this delay is attributable to the landlord or that there was an agreement waiving rent for those months.

While I accept the evidence of the parties that there were some maintenance issues with the rental unit I find little evidence that the nature or scope of the repairs was so significant that it would reasonably have delayed the tenant taking possession of the suite. I find little evidence to support the tenant's position that they were delayed in taking possession due to the landlord. I find the copies of correspondence submitted wherein the tenant inquires when they may obtain the keys for the suite to be insufficient to demonstrate that they were delayed due to the unilateral position of the landlord. I accept the landlord's submission that the tenant was free to take possession of the rental unit from the date the tenancy commenced on the written tenancy agreement.

I find insufficient evidence that the parties agreed that the tenant was not required to pay rent for April and May, 2020. If there was an agreement made between the parties, it would be reasonable to expect that there would be some documentary evidence noting the terms of the agreement. None was submitted into evidence. I find it unlikely that the parties would enter into an agreement to delay the move in and waive the obligation to pay rent without making some notation either in written correspondence or a written agreement signed by the parties. I would find this especially to be the case where the rental payments have been deducted from their account, directly contradicting the position that there is an agreement waiving the obligation to pay rent. If there was an agreement to waive rent for April and May, 2020 it is reasonable to expect that upon the rent being deducted the tenant would have had some correspondence with the landlord reminding them of the agreement. The tenant did not submit any documentary evidence that there was any such correspondence or communication.

I do not find the tenant's position that there was an agreement waiving their obligation to pay the full monthly rent to be supported in the evidence or consistent with their conduct. I find that the tenant was obligated to pay the full rent for the term of this tenancy as set out in the written tenancy agreement. I do not find sufficient evidence that the tenant was prevented from taking possession by the landlord or that there was an agreement to waive their obligation to pay rent. Based on the totality of the evidence I find that the tenant has not established that there has been any breach on the part of the landlord that would give rise to a monetary award. Consequently, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: August 21, 2020

Residential Tenancy Branch