



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

In this dispute, the landlord seeks compensation for unpaid rent pursuant to sections 26 and 67 of the *Residential Tenancy Act* (the “Act”), and, recovery of the filing fee.

The landlord applied for dispute resolution on April 11, 2020 and a dispute resolution hearing was held on August 4, 2020. The landlord and the tenants attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

It should be noted that the tenants denied ever receiving the landlord’s Notice of Dispute Resolution Proceeding package, while the landlord stated that he mailed the package, to both tenants, shortly after filing his Application for Dispute Resolution. The landlord testified that he had copies of the registered mail tracking numbers. Nonetheless, the tenants denied having received the package.

I provided options to the parties in terms of adjourning the matter in order to exchange evidence, or, the option of proceeding on the basis of primarily oral evidence. Both parties acknowledged that they wished to proceed with the hearing.

As an aside, it should be noted that the only documentary evidence submitted (by the landlord) was a copy of an uncashed cheque for March 2020.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to compensation as claimed?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy started on November 15, 2017 and the monthly rent was \$2,000.00. The tenants paid a security deposit of \$1,000.00, which the landlord did not return to the tenants at the end of the tenancy. Rather, he applied the deposit to rent that he believed was owed to him by the tenants. No copy of the tenancy agreement was submitted into evidence.

The landlord testified that he gave the tenants a Two Month Notice to End Tenancy earlier (the tenant testified that it was served on February 25, 2020). The tenants testified that they found a new place the next day and wanted to give the landlord their notice to end the tenancy early, as is permitted under the Act.

However, the landlord had gone to Hawaii, and was not back until March 2, 2020. The tenants then gave the landlord a ten-day notice to vacate by March 12, 2020.

The tenants ended up vacating the rental unit on March 10, 2020. The landlord testified that he received the tenants' forwarding address in writing on March 27, 2020.

The landlord submits that the tenants owe him \$800.00 for rent. The tenant testified that the landlord gave him a cheque for \$2,000.00, but that the landlord still owes the tenant \$800.00.

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.

I first turn to the matter of how the tenancy ended. The landlord issued a notice under section 49(5) of the Act. This is where a purchaser of the rental unit advises the landlord that the purchaser intends in good faith to occupy the rental unit. The tenants did not dispute the notice to end the tenancy.

Section 51(1) of the Act states that

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(1.1) of the Act states that

A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Section 51(1.2) of the Act states that

If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Finally, section 50(1) and (2) of the Act states that

(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

In this dispute, the tenant testified that the landlord gave him \$2,000.00, which is an amount that is equivalent of one month's rent payable under the tenancy agreement.

Thus, the tenant has been adequately compensated pursuant to section 51(1) of the Act. I will, however, turn to the matter of the security deposit in a moment.

As for the rent for March 2020, which only includes the period of March 1 to March 12, 2020, the tenant testified that he paid the landlord \$800.00 for that on a *pro rata per diem* basis. The landlord did not establish, I conclude, why or how the tenants are somehow liable to pay him \$800.00 for rent.

As such, I find that the landlord has not met the onus of proving his claim for \$800.00. Accordingly, the landlord's application is dismissed without leave to reapply.

In respect of the landlord's claim for recovery of the filing fee, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was unsuccessful, I dismiss his claim for reimbursement of the filing fee.

Finally, regarding the security deposit, the landlord testified that he did not return the tenants' security deposit after receiving their forwarding address. Rather, he simply applied the amount to rent. There is no evidence that the tenants provided written consent for the landlord to retain the security deposit for any reason.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I note that the landlord applied for dispute resolution within 15 days exactly from receiving the tenants' forwarding address in writing. However, given that the landlord has not proven that they are entitled to compensation against the tenants, I therefore order that the landlord return the tenants' security deposit of \$1,000.00. A monetary order in the amount of \$1,000.00 is issued, in conjunction with this decision, to the tenants.

(If the tenants believe that the landlord somehow owes them additional compensation unrelated to the security deposit, which is ordered returned, they must file a separate application for dispute resolution.)

Conclusion

I dismiss the landlord's application, without leave to reapply.

I grant the tenants a monetary order in the amount of \$1,000.00, which must be served (in compliance with section 88 of the Act) on the landlord. Should the landlord fail to pay the tenants the amount owed, the tenants may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is final and binding, except where permitted by the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 4, 2020

Residential Tenancy Branch