



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the 1st initial documentary evidence package via Canada Post Registered Mail on April 4, 2020. The tenants stated that the second documentary evidence package was served via Canada Post Registered Mail on August 4, 2020. The landlord argued that no such document has been served. The tenants referenced a submitted copy of the Canada Post Customer Receipt dated August 4, 2020. The landlord was adamant that no such package was served. A search was made on the Canada Post Registered Mail online tracking site. The results revealed that Canada Post determined on August 4, 2020 a processing error and that the last entry on August 6, 2020 shows that the package was still being processed by Canada Post. On this basis, I find that the landlord was not duly served. Extensive discussions took place and the tenants stated that although crucial to their application, the tenants were content to continue the hearing in the absence of that documentary evidence. Both parties confirmed their consent to proceed in the absence of the tenant's 2nd documentary evidence package. As such, the second package is excluded from consideration. Both parties confirmed that the tenant's third documentary evidence package consisted of proof of service documents for the 1st and 2nd documentary evidence and as such warranted no further action as both parties are agreement on the contents..

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation or money owed and recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2020 on a fixed term tenancy ending on March 31, 2021 as per the submitted copy of the signed tenancy agreement dated March 15, 2020. The monthly rent was \$1,750.00 payable on the 1st day of each month. A security deposit of \$875.00 was paid on March 13, 2020.

The tenants seek a monetary claim of \$21,224.00 which consists of:

\$224.00	Moving Fee
\$21,000.00	Rent

The tenants provided written details which states,

Me and my girlfriend signed a tenancy agreement on March 13th. It is for one year which start from April 1st and the move in date is March 29th which was agreed by the landlord. We paid the deposit two weeks ago and paid the first months rent on March 28. On March 29th, We packed everything and the moving company help us to move everything to the new home. However, After we arrive there, the property renting agents said we couldn't move in since the landlord doesn't want to rent it to us anymore.

[reproduced as written]

The landlord confirmed that on March 29, 2020 the landlord's agent requested copies of the tenant's identification in order to allow the tenants' entry into the rental unit. Both parties confirmed that access was not given to the tenants to take possession of the rental unit. The landlord stated that they were told by their renting agent that they could cancel the tenancy agreement on March 29, 2020 without any repercussions if the tenants refused to provide their identification.

The tenants' seek recovery of \$224.00 for moving costs as they were forced to move back into their old tenancy on the same date as it was still vacant. The tenants provided a copy of the moving invoice dated March 29, 2020.

The tenants also seek \$21,000.00 for rent not paid to the landlord. The tenants confirmed that although the first months rent was given to the landlord via etransfer, the landlord did not accept it. Both parties confirmed no other rent was paid. The tenants clarified that the tenants seek this amount because the landlord's tenancy agreement provides for the tenants to compensate the landlord with loss of rental income in the event that the tenants pre-maturely end the tenancy before the end of the fixed term tenancy. Extensive discussion took place for both parties and they were both informed that the tenants' application was unreasonable in the circumstances, but that the landlord is entitled to compensation only if the landlord is unable to obtain a new tenant to replace them if such a situation occurred. On this basis, this portion of the tenants' claim is dismissed.

Analysis

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 accept the undisputed affirmed evidence of both parties and find that the landlord through her rental agent denied access to the tenants on March 29, 2020 the date of possession. The tenants were forced to move all their belongings back into their original tenancy and incurred an expense of \$224.00. The tenants provided a copy of the invoice dated March 29, 2020. On this basis, I find that the tenants are entitled to recovery of the \$224.00 moving fee.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$324.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

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 10, 2020

Residential Tenancy Branch