



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' 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.

The tenant's counsel and K.H.C. (the tenants) attended the hearing via conference call and provided testimony. The tenants stated that the landlord was served with the notice of hearing package via Canada Post Regular Mail on July 23, 2020. The tenants also confirmed that the landlord was served with the tenant's application for dispute and the submitted documentary evidence via Xpress Post without a signature requirement on July 6, 2020.

I accept the undisputed affirmed testimony of the tenants and find on a balance of probabilities that the landlord was properly served and is deemed served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation 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 15, 2020 on a fixed term tenancy ending on April 15, 2021 as per the submitted copy of the signed tenancy agreement dated April 8, 2020. The monthly rent was \$4,500.00 payable on the 15th day of each month. A security deposit of \$2,250.00 and a pet damage deposit of \$2,250.00 were paid.

The tenants seek a monetary claim of \$4,600.00 which consists of:

\$4,500.00	Rent Pre-Payment Recovery
\$100.00	Filing Fee

The tenants provided written details which state:

The contract was terminated one day before the move in date of April 15, 2020 and as a result the Tenant never moved in. The Landlord claimed she would return the \$9000 paid to her (\$4500 rent prepayment + \$2250 pet damage deposit + \$2250 security deposit) and the Tenant only received the two deposits. The Landlord also claims she is legally entitled to this \$4500 despite the Tenant never moving in.
[reproduced as written]

The tenants clarified that the landlord terminated the tenancy via text message on April 14, 2020 and has submitted a copy of the text message. The submitted document file named "All_text_correspondence_between_landlord)and_tenant" was referenced by the tenants on page 39 which is from the landlord to the tenant which states,

Thanks, Grace,

*Since I haven't heard back from you, **I will be terminating your rental contract in writing tomorrow.** I will also be contacting the police if you step on the property between now and 1pm tomorrow.*

Again, if you are serious about resolving this issue you need to call me immediately.

Sincerely,

Joan

[reproduced as written with emphasis]

The tenants also referenced another text message on the same file on page 40 from the tenant to the landlord which states,

Thank you Joan for your prompt reply, My family and you have mutually agreed to terminate the rental contract signed on 4/8/2020. Please proceed with the return of \$9000 in full to our end via cheque.

Are you want to meet at 13:00 tomorrow or pls let us know when is the best for you.

Sincerely, Grace and Terry

[reproduced as written]

The tenants also referenced another text message from the same file on page 41 which states in part,

...Once you have returned the key to the house as per my instructions I will return your \$9000.00 via e-transfer as this is how I was paid.

[reproduced as written]

The tenants also submitted photographs of etransfers dated April 9, 2020 of \$5,000.00 and April 14, 2020 of \$4,000.00 for the total payment to the landlord for the 1st months rent of \$4,500.00 and the \$2,250.00 security and the \$2,250.00 pet damage deposits. The tenants confirmed that the landlord returned the \$2,250.00 security and the \$2,250.00 pet damage deposits as shown in the submitted copy of the photograph of etransfers dated April 15, 2020 of \$3,000.00 and April 16, 2020 of \$1,500.00.

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.

In this case, I accept the undisputed evidence of the tenants and find that the tenancy was terminated by the landlord on April 14, 2020 with the later acceptance by the tenants via text message. This is confirmed in the tenants' submitted documentary evidence of the text message exchange between the two parties. The tenants confirmed that the landlord currently still holds the \$4,500.00 payment of rent for April/May 2020. On this basis, I find that the tenants have established a claim for return of the rent pre-payment of \$4,500.00.

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

Conclusion

The tenants are granted a monetary order for \$4,600.00.

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 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: September 04, 2020

Residential Tenancy Branch