



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenant to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

In support of her application, the tenant submitted that she contacted someone on May 19, 2020, after seeing a Facebook advertisement for a rental unit. The evidence showed that the person she contacted was AB (*redacted for privacy*). The tenant submitted on May 20, 2020, she advised AB she would take the rental unit and on May 21, 2020, AB emailed her a signed tenancy agreement, with the understanding that they would meet at the rental unit on May 22, 2020, to inspect the rental unit and exchange the written tenancy agreement. The tenancy was to begin on June 1, 2020, according to the tenancy agreement and the tenant.

The tenant submitted that at 9:39 a.m. on May 21, 2020, she sent the landlord funds by e-transfer, in the amount of \$1,535, which was \$1,000 for the monthly rent for June, \$500 for the security deposit and \$35 for WIFI.

The tenant said that at 9:41 p.m., on May 21, 2020, “AB” sent her a text message indicating that “they” had accepted an offer on the residential property and the buyer wanted the suite empty. Further the text message said “I am so sorry for wasting your time like this. Would have loved to have you living there. I am so sorry about this”. Filed into evidence was a copy of the text message.

The tenant said she cancelled the e-transfer of funds shortly afterwards.

The tenant submitted she is entitled to \$2,000, which is her monetary claim, as that is the equivalent compensation when a landlord ends a tenancy for landlord’s use.

Landlord’s response –

In response to my inquiry, the landlord said that AB was his 36 year old son who represented him.

The landlord said that they did not receive the tenancy agreement so as far as he was concerned, there was no tenancy. The landlord additionally said that they sent the tenancy agreement before they changed their minds. The landlord submitted a copy of the email showing that AB sent the tenant the tenancy agreement by attachment. AB listed his name, the business website, a corporate name and telephone number at the end of the email.

The landlord pointed out that the tenant cancelled the e-transfer, so this signifies there was no tenancy. When I questioned the landlord about why the tenant should not cancel the e-transfer in light of the text message from AB, he said they would not have kept the money.

In their evidence, the landlord submitted that he did not sign the tenancy agreement, which was proven by a document February 2019 on an unrelated matter, submitted into evidence showing his “real” signature.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

The tenant said that she had come to an agreement with the landlord’s agent and son, AB, to start a tenancy on June 1, 2020, for a monthly rent of \$1,000 and security deposit of \$500. The landlord denies a tenancy was created.

The landlord confirmed that his son acted for him in this matter and he failed to have his son attend the hearing to provide rebuttal testimony. I find that this fact alone means the tenant’s testimony is uncontested, especially in light of all the documentary evidence shows AB’s name as the point of contact and acting on behalf of the business.

While the landlord suggested in their evidence that the signature on the written tenancy agreement was not his, he made no mention of that in the hearing. What the landlord has implied is a fraudulent signature put on the tenancy agreement by the tenant, and yet, that very important point, if true, was not argued at the hearing.

The landlord further failed to explain why he thought this tenant would randomly know to pick out his home and put their name, which included a corporate name, the landlord's address, and the rental unit address on a tenancy agreement.

While the landlord argued that the tenant cancelling the e-transfer was significant in proving his defense, the evidence shows this cancellation was at 9:55 p.m., on May 21, 2020, after she had received AB's text message at 9:41 p.m. that the house had been sold.

The landlord failed to explain in the hearing or otherwise how a tenant cancelling a monthly rent and security deposit payment after being told the house was sold and the tenancy was cancelled is anything other than a reasonable response.

In this case, I favoured the testimony and evidence of the tenant, as it was consistent and credible. On the other hand, I find the landlord's testimony was not reasonable or believable in the circumstances and self-serving.

I find the tenant's testimony and evidence was consistent, delivered in a forthright manner, and credible. I accept that AB signed the written tenancy agreement he sent to the tenant and that they had agreed to meet at the rental unit on May 22, 2020, to exchange the signed documents and keys.

I therefore find the tenant and the landlord entered into a valid, enforceable tenancy agreement and that the landlord was responsible for providing the rental unit on June 1, 2020, according to the terms of the tenancy agreement, but failed to do so.

Tenancy Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law. If a tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of a monetary award for the portion of the premises or property affected.

I agree with Policy Guideline and find that the landlord deprived the tenant of the rental unit as contracted for on June 1, 2020, which required the tenant to find another place to stay in the alternative on short notice.

I find it reasonable that due to the landlord's breach of the Act and tenancy agreement, the tenant is entitled to monetary compensation in the amount of \$1,000, representing the rent for the month of June 2020.

As to the tenant's claim for two months' compensation, I inform the tenant that the Act allows for additional compensation in circumstances when a landlord has ended a tenancy for landlord's use, when a landlord issues the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice). That was not the case here, and even then, a tenant is only entitled to that additional compensation in certain circumstances. Those circumstances do not apply here.

I therefore dismiss the tenant's claim for an additional \$1,000.00.

Due to her successful application, I grant the tenant recovery of her filing fee of \$100.

Conclusion

I find the tenant has established a **monetary claim** of **\$1,100.00**, comprised of the amount of monthly rent which she was to pay for the rental unit as way of damages for being deprived of the loss of use of the rental unit for the month of June 1, 2020, and recovery of her filing fee of \$100.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1,100.00.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is cautioned that costs of such enforcement may be recoverable from the landlord.

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 25, 2020

Residential Tenancy Branch