



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to recover the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on July 24, 2020 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch was sent to the female Respondent, via registered mail, at the service address noted for her on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the female Respondent did not appear at the hearing.

The Agent for the Landlord stated that on July 24, 2020 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch was sent to the male Respondent, via registered mail, at the service address noted for him on the Application. The Agent for the Male Respondent acknowledged that these documents were received by the male Respondent.

As the aforementioned documents have been served to the female Respondent, the hearing proceeded in her absence of the female Respondent. As the evidence was served to both Respondents, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Are the Respondents obligated to pay \$2,000.00 to the Landlord?

Background and Evidence

The Agent for the Landlord stated that:

- On May 18, 2019 he and the female Respondent, hereinafter referred to as the Tenant, agreed to enter into a tenancy agreement, via email;
- The Tenant agreed to pay monthly rent of \$700.00;
- The Tenant agreed to pay a security deposit of \$700.00;
- The parties agreed the tenancy would begin on August 01, 2019;
- He never discussed entering into a tenancy agreement with the male Respondent;
- On July 01, 2019 the Tenant sent the Landlord a cheque for \$9,000.00;
- The \$9,000.00 cheque was to pay for the security deposit and several months' rent;
- On July 05, 2019 the Tenant informed him that she did not wish to proceed with the tenancy, and she asked the Landlord to return her payment of \$9,000.00;
- The Agent for the Landlord stated that had already deposited the cheque by the time the Tenant requested it be returned to her;
- He agreed to return the \$9,000.00 payment via e-transfer, but could only return \$2,000.00 each day due to banking restrictions;
- The Tenant asked the Landlord to e-transfer the funds to the male Respondent;
- He sent the male Respondent one e-transfer of \$2,000.00, which was received by the male Respondent;
- After he sent the first e-transfer, he learned that the Tenant's cheque for \$9,000.00 was not honoured by her financial institution, so he did not send any additional e-transfers;
- He believes the male Respondent knows the Tenant, as he received an email from the male Respondent on July 03, 2019, in which he confirmed he received a payment from her; and
- He did not submit a copy of the email he allegedly received from the male Respondent on July 03, 2019.

The Agent for the Male Respondent stated that:

- The male Respondent never discussed entering into a tenancy agreement with the Landlord;

- The Male Respondent's friend, who is not named in this Application for Dispute Resolution, asked him to accept an e-transfer from the Landlord;
- This friend asked the male Respondent to forward the funds to her, via bit coin;
- The male Respondent received an e-transfer from the Landlord, in the amount of \$2,000.00;
- The male Respondent forwarded the \$2,000.00 to his friend, via bit-coin;
- The male Respondent does not know the Tenant; and
- Any email allegedly sent to the Landlord by the male Respondent in which he mentions the Tenant is fraudulent.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the male Respondent never discussed entering into a tenancy agreement and that they never entered into a tenancy agreement.

I have authority, pursuant to section 62(1) of the *Residential Tenancy Act (Act)*, to determine disputes in relation to which the director has accepted an application for dispute resolution, and any matters related to that dispute that arise under this *Act* or a tenancy agreement. Section 2(1) of the *Act* stipulates that this *Act* applies to tenancy agreements, rental units, and other residential property.

As the Landlord and the male Respondent never contemplated entering into a tenancy agreement and they never entered into a tenancy agreement, I find that the *Act* does not apply to any dispute between these parties. As the *Act* does not apply to any dispute between the Landlord and the male Respondent, I do not have jurisdiction over any dispute between these parties. I therefore dismiss the Landlord's application for a monetary Order naming the male Respondent.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a tenancy agreement, which was to commence on August 01, 2019. I therefore find that I have jurisdiction over disputes between the Landlord and the Tenant that arise in relation to that tenancy agreement.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay monthly rent of \$700.00 and that she agreed to pay a security deposit of \$700.00.

As the Tenant agreed to pay a security deposit, I find that she is obligated to pay a security deposit to the Landlord, even though she did not move into the rental unit.

Section 19(1) of the *Act* stipulates that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. As the Tenant agreed to pay rent of \$700.00, I find that the Landlord did not have the right to require a security deposit of more than \$350.00. I therefore find that the Tenant must pay the Landlord a security deposit of \$350.00, regardless of the fact the Tenant agreed to pay a larger amount.

On the basis of the undisputed evidence, I find that the Tenant has not paid a security deposit in any amount, given that the cheque she tendered for \$9,000.00 did not clear her financial institution.

The Landlord has applied to recover the security deposit of \$2,000.00. As the Tenant is only required to pay a security deposit of \$350.00, I dismiss the Landlord's application to recover the remaining "security deposit" of \$1,650.00.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord if the landlord experiences damage or loss resulting from the tenant not complying with this *Act* or the tenancy agreement. The Landlord has not applied for compensation for anything other than the security deposit. As the Landlord has failed to establish any other loss resulting from the Tenant failing to comply with the *Act* or the tenancy agreement, I am unable to award compensation for the remaining claim of \$1,650.00.

It is readily apparent that the Landlord is attempting to use the Dispute Resolution Process to recover funds that he sent to the male Respondent before he realized a payment the Tenant made to him was not honoured by her financial institution. I do not have jurisdiction over this type of transaction and I, therefore, do not have authority to award compensation for anything other than the amount awarded.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$450.00, which includes \$350.00 for the security deposit and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the

Landlord a monetary Order for \$450.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: November 10, 2020

Residential Tenancy Branch