



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Orca Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' 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 listed attended the hearing; however, no representative for the landlord attended.

The tenant stated he served the landlord with their application for dispute resolution and Notice of Hearing by registered mail on September 19, 2020. The tenant provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision. A review of the Canada Post tracking system shows the registered mail was delivered on September 21, 2020.

I accept the tenant's evidence that the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present his affirmed evidence orally 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 submissions and/or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters –

The tenant said that he sought to claim for additional monetary compensation other than the amount listed in their application. The tenant confirmed that he had not amended his application increasing their monetary claim.

A monetary claim of this type may only be amended or increased through an amended application and supporting evidence, which then must be served to the respondent, the landlord here, in compliance with the timelines set out in the Rules. This is because the respondent is entitled to know the claim against them and have an opportunity to submit responsive evidence.

I therefore informed the tenant that the hearing would proceed only on the original monetary claim of \$9,750.

I also note that the listed landlord here is not the landlord listed on the written tenancy agreement. The landlord here, a property management/realty company, was acting for the apparent owner listed on the written tenancy agreement. The written tenancy agreement showed this landlord's company name at the bottom of each page in the tenancy agreement, showed this landlord's address for service on the tenancy agreement, and was the only source of contact for the tenants. Additionally, the tenants sent their funds by E-transfer to the landlord here. I find the landlord here was acting as agent for the owner.

Issue(s) to be Decided

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

Background and Evidence

The tenant submitted a copy of the written tenancy agreement showing a tenancy start date of September 1, 2020, a fixed term through August 31, 2022, monthly rent of \$6,300, due on the 1st day of the month, a prepaid, utility fee of \$200, and a security deposit of \$3,150 being paid by the tenants to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The tenant gave the following testimony. On August 21, 2020, he, his wife and son met with an agent for the landlord at the premises. He asked the agent two direct questions, why was there a strong air freshener odour and have there ever been any past or present problems with rodents.

The agent answered that the vacating tenants were Spanish and liked air fresheners and that there have never been any problems with rodents.

The tenant said that he and his family had issues with rodents before and this matter was of utmost importance. Due to the assurances of the landlord's agent, the tenants signed the written tenancy agreement and forwarded the landlord the amount of \$9650 on August 25, 2020 by e-Transfer, comprised of the first month's rent of \$6,300, the utility charge of \$200, and the security deposit of \$3,150. Filed into evidence was a copy of the e-Transfer statement.

When they were given the keys to the rental unit on August 29, 2020, they discovered that the crawl space had rat droppings, a dead mouse, and multiple, at least 15, rat and mouse traps, some laid out and some in unopened packages, and bait. The tenant notified the agent that they were not moving into the rental unit, due to the misrepresentation. Filed into evidence was a copy of the notice to the landlord's agent and photographs of the rat droppings and rat traps.

The tenants were pressed into finding alternate accommodations immediately.

The tenant also submitted a report from the pest control company, dated September 14, 2020, indicating entry points for possible skunks/raccoons, holes in the eaves, with a recommendation for rodent proofing, and confirmation of a strong odour of rat urine that was now noticeable as the air freshener of the previous tenants had worn off. Filed into evidence were the two reports.

The tenant submitted that they are entitled to a termination of the tenancy and to be reimbursed for the first monthly rent, the utility payment and a return of their security deposit, due to either the negligence or intentional misrepresentation by the landlord's agent.

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.

As no one representing the landlord attended the hearing, I consider the tenants' evidence to be unopposed.

The tenant said that they are entitled to the sums transferred to the landlord, as they only signed the tenancy agreement due to the landlord's agent's representation that there had not been any past or present issues with rodents. The tenant submitted that the rodent issue was their first and foremost importance, and were induced into signing the tenancy agreement by the misrepresentation of the landlord's agent that there were no issues with rodents.

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 the Policy Guideline and I find that the landlord misrepresented the state of the rental unit, which induced the tenants to sign the written tenancy agreement. I find the evidence shows that the rental unit did not conform to health or safety standards, which required the tenants to find another place to stay in the alternative on short notice.

Additionally, section 44(1)(f) of the Act indicates one way a tenancy ends is when the director orders that the tenancy is ended.

As I have found that the landlord's agent misrepresented the state of the rental unit and that it did not conform to health or safety standards, I order that the obligations of the tenancy ended on August 29, 2020, when the tenants discovered the signs of rodent infestation, whether past or present, in the rental unit.

I therefore find the tenants are entitled to a return of their first month's rent for September 2020, for \$6,300, the utility charge of \$200, and their security deposit of \$3,150.

I also grant the tenants recovery of their filing fee of \$100.

Conclusion

For the above reasons, I find the tenants have established a **monetary claim of \$9,750**, comprised of the first month's rent for September 2020 of \$6,300, the utility charge of \$200, their security deposit of \$3,150, and recovery of their filing fee of \$100.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of **\$9,750**.

Should the landlord fail to pay the tenants 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: January 5, 2021

Residential Tenancy Branch