



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNDC, FF
For the landlord: MNR-S, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for the following:

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

The landlord applied for the following:

- a monetary order for unpaid rent;
- authority to retain the tenants' security deposit; and
- to recover the cost of the filing fee.

The tenants and the landlord attended the hearing and were affirmed. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties were instructed that recordings of the hearing were prohibited and if they were recording, they were to immediately stop.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, 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.

Preliminary and Procedural Matters-

The tenants' application was made on December 2, 2020, and the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was provided to the tenants on December 9, 2020, in order to serve the landlord.

The landlord submitted that he did not received the tenants' application until sometime in January 2021.

In response to my inquiry, the tenant provided inconsistent testimony as to when the landlord was served the tenants' application. The tenant changed the dates of service several times and provided different dates of service of their application and evidence. This changing of service dates kept changing when the tenants were provided the timelines for service.

Under section 59(3) of the Act and 3.1 of the Rules, a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Rule 3.5 states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find the tenants were unable to provide clear evidence that the landlord was served with their application within 3 days of making it. As a result, I dismiss the tenants' application, with leave to reapply.

The hearing proceeded on the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted that the tenants came to view the rental unit on November 7, 2020 and the parties agreed to the month-to-month tenancy. The landlord submitted that the monthly rent was to be \$1,100 and the security deposit was \$550, with a tenancy start date of December 1, 2020.

The landlord and the tenant, GA, signed a written tenancy agreement on November 30, 2020, as the tenant wanted to move into the rental unit early. Filed into evidence was a copy of the written tenancy agreement.

According to the landlord, the tenants paid the security deposit of \$550, but that he never received the monthly rent of \$1,100.

The landlord submitted that although the tenants sent the landlord an email transfer for the monthly rent on November 22, 2020, he was unable to deposit the funds, receiving an error message when making the attempts.

The landlord submitted that he contacted the tenants, but they kept referring to an automated email confirming payment, according to the landlord.

The tenant came the next day, and they began an investigation with Interac. The bank confirmed that the money had been intercepted and was deposited into a third party's bank account. Interac suggested a bank investigation for fraud. According to the landlord, the tenant's bank confirmed fraud.

The landlord submitted that the tenant had begun moving his personal property into the rental unit, without paying rent, and that evening, after a conversation with his sister, the tenant moved his belongings out.

The landlord submitted that the tenant has yet to provide any notice of vacating the rental unit, and that because the tenancy was to start on December 1, 2020, he is entitled to \$1,100 for loss of rent for December 2020.

Filed into evidence was a copy of the landlord's bank statement, showing a deposit of the security deposit of \$550, but no deposit of \$1,100 for the monthly rent.

Tenants' response –

The tenant submitted the male tenant visited the rental unit on November 7, 2020 and on November 22, 2020, they sent the landlord the monthly rent of \$1,100. Their bank records showed the transaction was complete.

On November 30, 2020, the tenant went to meet the landlord, who informed the tenant that monthly rent had not been paid. The tenant submitted that from their perspective, the monthly rent had been paid.

The tenant submitted that on November 30, 2020, they made it clear to the landlord they were not moving into the rental unit. The tenants submitted that they never moved into the rental unit.

The tenant submitted that the landlord kept trying to call and sent text messages.

According to the tenants, they complied with their obligations and did everything the landlord wanted them to do to start the tenancy.

Filed into evidence were the confirmations of the payment of the security deposit and the monthly rent.

Analysis

Based on the oral and written evidence and 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. In this case, the landlord has the burden of proof to substantiate his claim on a balance of probabilities.

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the undisputed evidence is that the landlord and the tenant, GA, signed a written tenancy agreement agreeing that the tenancy would begin on December 1, 2020, that monthly rent would be \$1,100 and that the tenants would pay a security deposit of \$550. Further, the undisputed evidence is that the landlord received the tenants' security deposit of \$550.

Under section 45(1) of the Act, a tenant may end a month-to-month tenancy by giving the landlord a written notice that is not earlier than a month after the landlord receives the notice and is the day before the day of the month that rent is payable.

What that means, in this case, as the tenancy was to start on December 1, 2020, the tenants were legally obligated to pay the monthly rent of \$1,100 on or before December 1, 2020.

While the tenants may have believed they fulfilled their obligation of paying the monthly rent and the security deposit, I find the evidence shows the tenants were the victims of fraud, as the monthly rent payment was intercepted and not received by the landlord.

Nonetheless, the tenants were contractually obligated to the landlord for the monthly rent of \$1,100 for December 2020.

I further find that the tenants failed to provide written notice at least one clear calendar month in advance of December 1, 2020.

For these reasons, I therefore find the landlord has provided sufficient evidence to support his monetary claim for loss of rent revenue of \$1,100 for the month of December 2020.

As the landlord has been successful with his application, I grant the landlord recovery of the filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a monetary award of \$1,200, comprised of unpaid rent of \$1,100 for December 2020 and the filing fee paid for this application in the amount of \$100.

At the landlord's request, pursuant to section 72(2) of the Act, I direct him to retain the tenants' security deposit of \$550 in partial satisfaction of his monetary award of \$1,200. I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$650.

Should the tenants fail to pay the landlords 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 tenants are cautioned that costs of such enforcement may be recoverable from the tenants.

Conclusion

The landlord's application for monetary compensation is granted.

The landlord is granted a monetary award of \$1,200, and is granted authority to retain the tenants' security deposit of \$550 in partial satisfaction, and is granted a monetary order in the amount of \$650 for the balance due.

The tenants' application is dismissed, with leave to reapply, due to insufficient evidence of the required service of their hearing package on 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: April 7, 2021

Residential Tenancy Branch