



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants, under the Residential Tenancy Act (the “Act”) for a monetary order for money owed, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making an unauthorized recording of the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Are the tenants entitled to a monetary order for money owed?

Background and Evidence

The tenancy began on April 1, 2019. Rent in the amount of \$2,300.00 was payable on the first of each month. A security deposit of \$1,350.00 was paid by the tenants. The tenancy ended on January 31, 2021.

The tenants testified that they had given the landlord post dated cheques in the amount of \$2,300.00 for July and August 2021. The tenants stated that because the government had extended the temporary rental supplement program for both July and August 2021, that the landlord received an overpayment of rent of \$300.00 for each of these months. The tenants seek the return of overpayment of rent in the amount of

\$600.00. Filed in evidence are copies of the cashed cheques and copies of the temporary rental supplement paid to the landlord.

The landlord testified that they did receive from the tenants, \$2,300.00 for each month of July and August 2020 and a further rent supplement of \$300.00 for each month.

The landlord argued that they feel the tenants owed them \$1,600.00 for a shortfall of rent for April and May 2020. The landlord stated that they had agreed to lower the rent to \$1,000.00 and to receive the rent supplement, which was to be \$500.00. However, the tenants only received the amount of \$300.00 as they did not have children. The landlord stated that the tenants did later pay the shortfall of \$200.00 for the rent supplement.

The landlord stated that when this agreement was being discussed over the telephone with the tenants they wanted the tenants to pay the shortfall at a later date; however, that was not agreed to and because of the tension it created, they did not put that as a term in the agreement.

Filed in evidence are multiple emails between the parties, I have referred to the email of March 31, 2020, sent by the landlord, which in part reads,

“Due to the current situation of the COVID- 19 and to refer to our recent conversation on the phone, we agreed that I receive the amount of 1000\$ in rent per month from you plus the rent supplement from the government. The above agreement will be temporary for the time being until further notice”

[Reproduced as written]

The email of May 30, 2020, from the tenants in part reads,

“In respect to difference of \$200 of what we expect (\$500 government support per month) and what they actually paid ,after government released more details , government of Bc announced that \$500 is assistance for the family with independent (children) and the maximum eligibility for us was \$300 per month. Therefore, Even before your request i reached out to your husband and told him we understand you count on 1500 per month and to make you more comfortable i told him do not worry and we will take care of the \$200 difference”

[Reproduced as written]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants seek the return of an overpayment of rent. As the landlord raised the issue of rent arrears, I must consider whether there was rent owed by the tenants for the months of April and May 2020.

I accept there was a written agreement that rent for April and May 2020, would be lowered to the amount of \$1,500.00. The tenants were to pay \$1,000.00 per month, and the rent supplement program was expected to pay \$500.00. However, the supplement the tenants were entitled to receive was \$300.00. The tenants agreed to pay the difference of \$200.00.

The landlord received from the tenants the total amount of \$2,000.00 for April and May 2020, a total of \$600.00 for rent, from the rent supplement program for these months and later, a cheque in the amount of \$400.00 was given to the landlord by the tenants. This totals the amount of \$3,000.00 satisfying the terms of their temporary agreement.

There was no documentary evidence from the landlord to support that the balance of rent would accrue as arrears during this period, and it is not supported by any of the documentary evidence before me. Further, I find it would be unreasonable to enter into an agreement to lower the rent on a temporary basis, if there was the expectation that the full rent was required to be paid, at least at a later date. I find the tenants had the right to rely upon the temporary agreement. Therefore, I find no rent arrears were owed for April and May 2020.

I am satisfied that the landlord received \$2,300.00 from the tenants by post dated cheques for the months of July and August 2020, which were issued prior to the rent supplement program being extended. The landlord then received \$300.00 from the rent supplement program for both the months of July and August 2020. This totals \$2,600.00 per month, which is greater than the rent of \$2,300.00 payable under the original tenancy agreement. I find there was an overpayment of rent by \$300.00 for both July and August 2020 for a total overpayment of \$600.00.

As I have found no rent arrears were owed by the tenants for April and May 2020, I find the landlord is not entitled to retain the overpayment of rent. I find the tenants are entitled to recover the overpayment of rent in the total amount of **\$600.00**.

I find the tenants are entitled to a monetary order in the amount of **\$700.00** comprise of the over payment of rent and to recover the cost of \$100.00 for the filing fee. This order may be enforced in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

I note the landlord indicated at the end of the hearing that they would return the overpayment of rent to the rent supplement program. I instructed the landlord that the money is not owed to the rent supplement program as it was paid for the benefit of the tenants, which they were entitled to receive. **The landlord is cautioned** should they return the money to the rent supplement program, contrary to my instructions, that the above monetary order is still enforceable against them.

Conclusion

The tenants are granted a monetary order in the above noted amount.

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: June 29, 2021

Residential Tenancy Branch