



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with an application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The respondent confirmed receipt of the tenant's amended dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the respondent duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Preliminary Issue: Small Claims Limit

The applicants filed a monetary claim in the amount of \$115,200.00. Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000.

If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery

are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

The applicants elected to abandon a portion of their claim, reducing their claim to \$35,000.00. The hearing proceeded accordingly.

Issues(s) to be Decided

Are the applicants entitled to a monetary order for compensation for money owed under the Act, regulation, or tenancy agreement?

Are the applicants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The applicants testified that they had entered into an agreement for a two year fixed-term tenancy that was to begin on March 1, 2022. Monthly rent was set at \$4,800.00, payable on the first of the month. It is undisputed that the applicants had sent the respondent a security and pet damage deposit in the amounts of \$2,400.00 each deposit by way of electronic transfer on February 19, 2022. The applicants also returned a signed tenancy agreement to the respondents. The applicants are seeking monetary compensation as they believe that the respondent had originally agreed to enter into a tenancy agreement with the applicants, but then changed their mind. The applicants were sent an email on February 21, 2022 informing them that the respondent had completed the reference check, and despite the positive feedback, the respondent was hesitant to continue with the tenancy as they were concerned about the applicants' financial means to pay the monthly rent. The respondent replied that they planned to sell the house instead.

The applicants testified that they had already made plans to move into the home, and as the applicants own a moving company, they suffered a financial hardship of at least \$10,000.00 as they prepared for the move. The applicants testified that they had started to pack as they felt that the respondent has confirmed that they would enter into a tenancy by requesting the deposits and sending over a tenancy agreement to sign. The applicants submitted emails in support of the correspondence between the two parties, as well as proof to support that the had signed the tenancy agreement, and sent over the deposits.

The respondent testified that although they had originally chosen the applicants for this tenancy, they had changed their minds before the tenancy was finalized. The respondent testified that they had clearly outlined the required steps before the tenancy would be confirmed, including the payment of the deposits, as well as reference checks before the respondent would send back a signed tenancy agreement.

The respondent notes that in the email dated February 18, 2022 to the applicants, the respondent requested copies of the applicants' identification as well as contact information for their references. The respondent testified that they had clearly indicated that they will prepare the lease agreement for March 1, 2022 once they receive the identification, and that the deposits would be required "once we sign back the lease agreement". The respondent notes that they have set up autodeposit of electronic transfers to their bank account, and that the applicants had sent over the deposits before the tenancy was finalized by the respondent signing the tenancy agreement.

The respondent notes that they had clearly informed the applicants that the tenancy was still pending upon completion of the reference checks, and the return of a signed tenancy agreement. The respondent disputes the applicants' testimony that a tenancy was already in place, and argued that they had the right at this point to change their minds based on financial suitability.

Analysis

The definitions of a "tenancy", "rental unit", and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

"rental unit" means living accommodation rented or intended to be rented to a tenant;

Sections 12 and 13 of the *Act* sets out the requirements of a tenancy agreement, and what must be included in the standard terms (boldface included for emphasis)

Tenancy agreements include the standard terms

- 12** The standard terms are terms of every tenancy agreement
- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
 - (b) whether or not the tenancy agreement is in writing.

Requirements for tenancy agreements

- 13** (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.
- (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out **all** of the following:
- (a) the standard terms;
 - (b) the correct legal names of the landlord and tenant;
 - (c) the address of the rental unit;
 - (d) the date the tenancy agreement is entered into;
 - (e) the address for service and telephone number of the landlord or the landlord's agent;
 - (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

I find it undisputed that the parties had started to discuss the terms of the tenancy, and the applicants were sent a copy of the tenancy agreement to sign. I find it also undisputed that the applicants had sent over the requested amounts for the deposits, as well as information for the reference checks.

I have considered the evidence and testimony before me, and I find that the evidence supports the testimony of the respondents. I find that although the respondent did communicate to the applicants that they were selected, I find that the respondent outlined multiple steps that had to be taken before finalizing and confirming the agreement. I find that the respondent had clearly informed the applicants that they still required a reference check, and would send back a copy of a completed and signed agreement after confirming that the deposits were paid, and after confirming a positive reference check.

It is clear that the applicants had loved the home, and was excited to move in. Although the respondent did convey that they were also excited about the next steps, I find that the respondent did clearly inform the applicants that they still needed to undertake the step of checking references, and that they would sign and send back a tenancy agreement. In this case, I find that the respondent had changed their mind, and that they had the right to not continue with the tenancy.

I find that a tenancy did not exist between both parties, and I am unable to consider any monetary claims by the applicants as there was no landlord tenant relationship.

Conclusion

I find that a tenancy did not exist between both parties, and I am unable to consider any monetary claims by the applicants as there was no landlord tenant relationship.

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: May 04, 2022