



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNRL-S, MNDCL, FFL
 Tenants: MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlords' Application for Dispute Resolution was made on November 21, 2022. The Landlords applied for the following relief, pursuant to the Act:

- a monetary order for unpaid rent or utilities;
- an order granting compensation for monetary loss or other money owed;
- an order permitting the Landlords to retain the security deposit held; and
- an order granting recovery of the filing fee.

The Tenants' Application for Dispute Resolution was made on November 3, 2022. The Tenants applied for the following relief, pursuant to the Act:

- an order granting recovery of the security deposit; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing. The Tenants attended the hearing and were assisted by CLL, an advocate. The parties provided affirmed testimony.

The Landlords testified the Notice of Dispute Resolution Proceeding package and was served on the Tenants by sending a copy to an email address provided for service of documents on November 30, 2022. A copy of the email showing attachments and an Address for Service documents were submitted in support. The Tenants acknowledged receipt.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlords by email on December 19, 2022, and that additional evidence was served on the Landlords by email on January 9, 2023. The Landlords acknowledged receipt.

Although the Landlords raised an issue with respect to service of the additional evidence on January 9, 2023, I find the Landlords had sufficient opportunity to examine and respond to the evidence.

No further issues were raised with respect to service or receipt of the above documents. The parties were represented or were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords an order granting compensation for monetary loss or other money owed?
3. Are the Landlords an order permitting the Landlords to retain the security deposit held?
4. Are the Landlords an order granting recovery of the filing fee?
5. Are the Tenants entitled to an order granting recovery of the security deposit?
6. Are the Tenants entitled to an order granting recovery of the filing fee.?

Background and Evidence

The parties agreed that a fixed-term tenancy began on August 1, 2022 and was expected to continue to July 31, 2023. During the tenancy, rent of \$1,800.00 per month was due on the first day of each month. Although the Tenants initially paid a security deposit of \$1,800.00, \$900.00 was returned to the Tenants on July 31, 2022. The Landlords hold a security deposit of \$900.00. A copy of the tenancy agreement, signed by the parties on June 24, 2022, was submitted into evidence.

The Landlords' Claims

First, the Landlords claim \$900.00 for unpaid rent. The Landlords testified that the Tenants did not move into the rental unit as agreed on August 1, 2022 and did not pay rent when due on that date. The Landlords testified that they were able to re-rent the unit effective August 15, 2022 and submitted a copy of the new tenancy agreement into evidence.

In reply, the Tenants acknowledged they did not move into the rental unit on August 1, 2022. They testified that they became concerned about the condition of the rental unit when they attended on July 28 and 29, 2022. The Tenants found the rental unit was “unclean” and felt it needed to be professionally cleaned. Photographs of the interior of the rental unit were submitted in support. They emailed the Landlords on July 30, 2022 to advise of their concerns.

The Landlords acknowledged that the rental unit was not cleaned on July 28 and 29, 2022, but that everything was cleaned thoroughly by July 31, 2022, the day before the Tenants were supposed to move in. A statement submitted by the Landlords states: “[a]ll floorings, carpets, couches and mattresses were vacuumed, shampooed and steamed; appliances and lighting fixtures were cleaned and working properly; furniture and sinks were fixed, cleaned and in good condition.” Photographs depicting the interior of the rental unit were submitted in support.

The Tenants testified they looked at the rental unit on July 31, 2022 and agreed that some cleaning had been completed. The Tenants also testified that they did intend to move into the rental unit – as evidenced by utility and internet service statements submitted – problems persisted.

Second, the Landlords claim \$335.00 for income loss for both. This amount was based on the Landlords' hourly wage for time spent preparing for hearing.

Finally, the Landlords claim \$100.00 in recovery of the filing fee.

The Tenants' Claims

The Tenants request the return of the security deposit. The Tenants testified they did not provide the Landlords with a forwarding address in writing but that the Landlords were provided with an email address.

The Tenants also claim \$100.00 in recovery of the filing fee.

Analysis

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

The Landlords' Claims

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

Further, section 26(1) of the Act confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, I am satisfied that the rights and obligations of the parties took effect on June 24, 2022, the date the tenancy agreement was signed. As a result, I find that rent became due on August 1, 2022.

Although the Tenants cited the condition of the rental unit as a basis for cancelling the tenancy agreement and withholding rent, I find there is insufficient evidence before me to conclude they had a right under the Act to do so. While I accept that the photographs submitted by the Tenants show the rental unit needed to be cleaned only days before they were to move in, the photographs submitted by the Landlords indicate that the

rental unit had been cleaned and was capable of being occupied on August 1, 2022. Section 32 of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and makes it suitable for occupation. The standard is not one of perfection.

In addition, I am satisfied the Landlords took reasonable steps to minimize their losses by finding new tenants to occupy the rental unit effective August 15, 2022, in accordance with section 7(b) of the Act. Therefore, I find the Landlords have demonstrated an entitlement to recover pro-rated rent from the Tenants for the period from August 1-14, 2022, of \$812.84, calculated as follows:

$$\text{\$1,800.00} / 31 \text{ days} = \text{\$58.06 per day}$$

$$\text{\$58.06} \times 14 \text{ days} = \text{\$812.84}$$

With respect to the Landlords' claim for \$335.00 for income loss, I find the Landlords' time spent preparing for the dispute resolution hearing is not recoverable.

Having been partially successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the application. Therefore, I find the Landlords are entitled to a total monetary award of \$912.84 in recovery of unpaid rent and the filing fee.

In the circumstances, I also find the Landlords are entitled to retain the \$900.00 security deposit in partial satisfaction of the Landlords' claim, leaving them with an outstanding monetary amount of \$12.84.

The Tenants' Claims

Section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. It is the receipt of a forwarding address in writing that triggers a landlord's obligation to return a deposit.

In this case, the Tenants acknowledged that they did not provide the Landlords with a forwarding address in writing, although they did provide the Landlords with an email address. As a result, the Landlords' obligation to return the security deposit to the Tenants was never triggered.

Considering the above, I find that the Tenants' requests for the return of the security deposit and to recover the filing fee are dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed without leave to reapply.

The Landlords are granted a monetary order in the amount of \$12.84. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 24, 2023

Residential Tenancy Branch