



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- for a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlords DS and PB attended. Tenants LK and TK appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenants testified that they served the tenants' dispute notice and materials by registered mail to the landlords' address for service on October 13, 2022. They provided a Canada Post receipt in evidence as proof of service. Based on their testimony I find the landlords served on October 18, 2022 in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order for compensation?
2. Are the tenants entitled to a monetary order for the return of the security deposit?
3. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy was to commence on October 1, 2022 on a month to month basis. Rent was \$2,800.00 per month due on the first of the month. A security deposit of \$1,400.00 is currently held in trust by the landlords.

Compensation

The tenants testified that they had agreed initially with the landlords to take possession of the rental unit on October 1, 2022. On September 29, 2022 the tenants attended the rental unit, received the keys to the rental unit and did a move in condition inspection with the landlords. No condition inspection report was prepared. The tenants testified that the rental unit was not ready for them to move in and there were still ongoing renovations in the rental unit.

The tenants decided that they could not move in, cancelled their mover, and rented a storage unit to store their possessions until they could find another place to rent. Tenant LK also testified that she had to take time off work and submitted a claim for her lost wages as she had to make arrangements for another place to rent. The tenants testified that they did not want to have people in the rental unit completing the renovations while they inhabited it. The tenants returned the keys to the rental unit to the landlords on September 29, 2022. The tenants produced receipts in evidence for their moving and storage claims.

The landlords testified that on September 29, 2022 the only work that remained to be done in the rental unit was the water line in the kitchen, which needed to be connected to the sink. A plumber was scheduled to attend prior to October 1, 2022. The landlords stated that they were accommodating the tenants' request for an early move and the tenancy was not supposed to commence until October 1, 2022.

Return of Security Deposit

The parties agreed that the landlord still retains the security deposit. The tenants testified that they provided the landlords with their forwarding address by letter dated October 11, 2022 and sent by registered mail to the landlords on October 13, 2022. They provided Canada Post receipts and tracking numbers in evidence.

The landlord denied receiving the tenants' forwarding address. He also stated that he was no' sure if the tenants were going to take possession of the rental unit until the tenants did not move in. The landlords stated that the tenants attempted to have the landlord sign a mutual agreement to end tenancy which the landlords refused. The landlords stated that they wish to keep the security deposit as the tenants did not pay October 2022 rent and the landlords were unable to rent the rental unit until November 2022.

Analysis

Compensation

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

I find that the tenants have not established that their loss happened due to a breach of the Act or tenancy agreement by the landlords. RTB Policy Guideline 1 states in part:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property

The tenants did not provide pictures of the rental unit showing its condition as of September 29, 2022. The tenants' information regarding the deficiencies was vague and unspecific. The tenants did not satisfy their onus to establish that the rental unit was uninhabitable or didn't meet the requirements in the RTB Policy Guidelines on October 1, 2022, the date that the parties agreed that the tenants would take possession. The tenants' claim for compensation is dismissed without leave to reapply.

Return of Security Deposit

I find that the landlords received the tenants' forwarding address sent by registered mail on October 13, 2022. I find that once the landlords confirmed the end of the tenancy, and within 15 days of the date of receiving the tenants' forwarding address the landlords were required to either return the security deposit to the tenants or file a claim for dispute resolution based on section 38 of the Act. The landlords did neither. Therefore, based on section 38(6) of the Act, the tenants are entitled to the return of double the amount of the security deposit ($2 \times \$1,400 = \$2,800$). The tenants' application is granted.

As the tenants are partially successful in their claim, they are entitled to recover the \$100.00 filing fee for the application.

Conclusion

The tenants are granted a monetary order in the amount of \$2,900.00 for the security deposit and the filing fee. The monetary order must be served on the landlords. 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: April 25, 2023

Residential Tenancy Branch