



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHAMAREL HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on July 4, 2023 concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for the return of the security deposit or pet damage deposit; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenants submitted that the landlord was served by registered mail on December 12, 2022 at the address for service of the landlord as contained in the tenancy agreement, and have provided a photograph of a Canada Post Registered Domestic Customer Receipt and a Canada Post cash register receipt dated December 12, 2022 containing a tracking number. The registered mail was returned to the tenants unclaimed.

The *Residential Tenancy Act* states that documents served by registered mail are deemed to have been served 5 days after mailing. I have reviewed the tenancy agreement which contains an address for service of the landlord, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

The landlord has not provided any evidentiary material, and all evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of pro-rated rent?
- Have the tenants established a monetary claim as against the landlord for return of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on October 16, 2022 and expired on April 30, 2023, at which time the tenants were to vacate the rental unit, and the tenancy agreement states that the reason for ending the tenancy is: "Landlord need camper for personal use." However the tenants moved out on November 20, 2022. Rent in the amount of \$1,500.00 was payable on the 1st day of each month. The tenant testified that the tenants actually moved in on the 10th of the month, and paid a pro-rated amount for the first partial month and full rent for November, 2022. On October 16, 2022 the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a holiday camping trailer which was situated in a trailer park. A copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the landlord told the tenants that he would reimburse the 10 days overpayment for November's rent, but has not done so.

The tenants have not provided a forwarding address to the landlord except on the envelope that the tenants served on the landlord containing notice of this hearing and the evidence.

The tenant further testified that during the tenancy the furnace and water stopped working, and numerous text messages exchanged between the parties have been provided for this hearing.

The tenants claim \$500.00 compensation for payment of rent to the end of November, 2022 considering that the tenants vacated on November 20, 2022, as promised by the landlord. The tenants also claim \$750.00 for the return of the security deposit, and to recover the \$100.00 filing fee for the cost of this application, for a total of \$1,350.00.

Analysis

Firstly, the *Residential Tenancy Act* states that a landlord must return a security deposit and/pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the tenants have not provided the landlord with a forwarding address in writing, and therefore, the tenants' application to recover the security deposit must be dismissed, with leave to reapply.

With respect to the balance of the tenants' application, I have reviewed all of the evidentiary material, specifically the text messages exchanged between the parties. A landlord must ensure that a rental unit is suitable for occupation by a tenant. In this case, the furnace didn't work during the winter months, and the tenants were without water and/or hot water, but there is no indication of how long the lack of heat and water took place.

The tenant also testified that the landlord had promised to return the balance of the rent paid for the month of November, 2022 considering that the tenants moved out of the rental unit on the 20th day of the month but paid full rent for the month. The only indication of a discussion in that regard is a text message from the tenants indicating that the tenants would proceed to a claim for the security deposit, plus monetary compensation for no heat, and pro-rated rent as of the 20th and for breaking the lease, and accessing the rental unit without the tenants' permission, but no agreement from the landlord. The tenants' application seeks \$500.00 as pro-rated rent for moving out November 20; \$750.00 for the security deposit and \$100.00 for the filing fee. There is no mention in the tenants' application that the tenants seek any compensation for no heat. It is not clear to me what the tenants had hoped to recover from the landlord. Therefore, I dismiss the tenants' application for monetary compensation, with leave to reapply.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety with leave to reapply.

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: July 09, 2023

Residential Tenancy Branch