



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The Applicants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. They ask me for the following orders against the Respondents.

1. Return of \$450.00 security deposit [the 'Deposit'].
2. Reimbursement for the \$100.00 filing fee for this application.

The Applicants appeared at the hearing on 20 June 2023. The Respondents also appeared.

Issues to be Decided

Were the Applicants ever tenants of the Respondents, and did they pay the Respondents the Deposit?

If so, must the Respondents return the Deposit to the Applicants?

Should the Respondents reimburse the Applicants for the cost of filing their application?

Background and Evidence

This is a new hearing of this dispute. At the first hearing on 16 January 2023, the Respondents did not participate [the 'First Hearing'] and a decision was made in their absence. They then applied to have the decision of that First Hearing reviewed, asserting that they never received notice of the First Hearing [the 'Hearing Notice'].

The RTB found that the Applicants had not submitted confirmation of when and where they sent the Hearing Notice. And so this new hearing was convened to provide the Respondents an opportunity to participate.

During this new hearing, the Applicants expressed disappointment that this dispute had to be heard again, as they insisted they had properly served the Respondents with the Hearing Notice (which the Applicants had received from the RTB on 17 May 2022). They told me that they had records showing that Canada Post had delivered the Hearing Notice to the Respondents [the 'Delivery Records'].

I permitted the Applicants to submit these Delivery Records to me, on condition that they also e-mailed copies of them to the Respondents, and that the Respondents had an opportunity to provide to me written argument as to the import of these records.

I will return to the significance of these Delivery Records.

Background and Evidence

At this hearing, the Applicants affirmed the following, by way of background:

- they lived in the Respondents' property from 1 July 2020 to 1 April 2021;
- before moving in, they looked at the unit they would rent, but there was no formal inspection or report on that inspection;
- in addition to renting the unit, the Applicants had access to a kitchen in the basement, for the use of tenants, and had their own bathroom;
- they paid the Respondents the Deposit, and they submitted a record of this payment, showing it having been sent electronically to an e-mail address that included the name of the Respondents [the 'First E-mail Address'];
- while living in the unit, the Applicants got to know the son of the Respondents [the 'Son'];
- the Son is in his twenties, and the Applicants know his name;
- the Applicants only interacted with the Son at the rental property – they did not know each other outside of that environment;
- on moving out, the Applicants wanted to meet with the Respondents, but they could not accommodate this meeting, and instead requested that the Applicants leave a note with his forwarding address, which the Applicants did; and
- there was no move-out inspection of the unit - the Respondents merely contacted the Applicants afterwards to say that the unit looked okay.

After the Applicants moved out, they left the country. They then contacted the Son and asked whether the Respondents would repay the Deposit. They contacted the Son because they had no convenient contact information for the Respondents. The Son replied that the Respondents would not repay the Deposit because they had to spend \$350.00 to clean the bathroom.

For their part, the Respondents swore to me that:

- they do rent a unit in their home, but the tenants of that unit share a kitchen and bathroom with the Respondents;
- there were no tenants in their home between July 2020 and April 2021: they did not start renting out the unit until 2022;
- the Applicants never rented the unit;
- the Respondents only have one e-mail address [the 'Second E-mail Address'], and in telling me this address, it was a different address from the First E-mail Address: it comprised only numbers, and not the name of the Respondents; and
- the Respondents have a son, who is 25.

The Respondents told me the name of their son, but they were largely unintelligible, save for the first syllable. But this was the same first syllable of the name that the Applicants attributed to the Son.

At the end of the hearing, I asked the Respondents to confirm their e-mail address to which the Applicants should send the Delivery Records. In reply, the Respondents gave me a different address from the Second E-mail Address [the 'Third E-mail Address'].

Subsequent to this hearing, I reviewed the Delivery Records. These show that Canada Post delivered the Hearing Notice at 1:32 p.m. on 24 May 2022 (about a week after the Applicants received it from the RTB). While these records do not show the precise address to which the Hearing Notice was delivered, they show that:

1. Canada Post delivered the Hearing Notice to the same city in which the Respondents' home is; and
2. that someone with the same surname and same first initial of the Respondents provided a 'verbal signature' confirming delivery.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

Were the Applicants ever tenants of the Respondents, and did they pay the Respondents the Deposit?

The Respondents swore to me that the Applicants never lived in this rental unit and, indeed, that the Respondents don't even know the Applicants. If I accept this, then there was no tenancy, and the Director of the RTB has no jurisdiction over this dispute.

But I do not accept the testimony of the Respondents, because I find that the Respondents were deceptively inconsistent in their testimony. As notable examples:

- the Respondents swore that they had only one e-mail address, but then contradicted this later in the hearing by providing a second, different e-mail address; and
- the Respondents swore that they never received the Hearing Notice, but the Delivery Records satisfy me that Canada Post probably delivered this Hearing Notice to the Respondents.

Taken together with other inconsistencies in the Respondents' evidence, I find their testimony to be incredible.

As for the Applicants, I found their testimony to be more consistent. For example, they affirmed the Son's name and that he was in his twenties. This was consistent with the Respondents' evidence of the age of their son, and even with the name of the son: unintelligible as the Respondents were, I could still make out the first syllable of their son's name, which was the same as that given by the Applicants.

The Applicants were able to corroborate the fact that they paid the Deposit with a record of having transferred the money to the First E-mail Address, with the Respondents' name. While the Respondents denied that this was their e-mail address, I do not find them credible, in no small part because of the inconsistencies of their sworn evidence to me about the Second E-mail Address and the Third E-mail Address.

Furthermore, the implication of the Respondents' argument is that the entire dispute has been fabricated by the Applicants. I find this to be implausible: the amount of money involved is relatively minor, and this is now the second hearing of this dispute. It would

be a significant effort on the part of the Applicants to fraudulently seek a relatively minor sum from an utter stranger.

I accept the Applicants' evidence as to having lived in the Respondents' home, and that the Applicants had a separate kitchen and bathroom, making this dispute about a tenancy subject to the *Residential Tenancy Act* [the 'Act'].

Must the Respondents return the Deposit to the Applicants?

In analysing this dispute, I consider Residential Tenancy Policy Guideline 17: 'Security Deposit and Set off'. This guideline reads, in part:

The arbitrator will order the return of a security deposit... on... a tenant's application for the return of the deposit... unless the tenant's right to the return of the deposit has been extinguished under the Act.

And the guideline cites sections 24(1), 36(1), and 38(2) as the portions of the Act that might extinguish a tenant's right to the return of a deposit. Those sections extinguish this right if a tenant did not participate in a move-in inspection or a move-out inspection.

So, has the Applicants' (that is, the tenants') right to the return of the Deposit been extinguished under these sections? No: the testimony of the tenants show that the Respondents (that is, the landlords) never conducted either a move-in or move-out inspection.

The guideline goes on to read:

Unless the tenant has specifically waived the doubling of the deposit... the arbitrator will order the return of double the deposit... if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

I have no record of the landlords filing any claim against the Deposit. And I accept that the tenants provided the landlords with a forwarding address on moving out, at the request of the landlords.

As a result, I find that the landlords owe the tenants:

1. double the Deposit (that is, \$900.00); plus

2. \$4.98 in interest on the Deposit, from 1 July 2020 to today's date.

As the tenants have succeeded in their application, I also order that the landlords reimburse them for the \$100.00 cost of filing this application.

Conclusion

I order that the landlords pay to the tenants \$1,004.98 *per* section 38 (6) of the Act.

The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with my order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce my order as an order of that court.

I make this on authority delegated to me by the Director of the RTB under section 9.1(1) of the *Residential Tenancy Act*.

Dated: 26 July 2023

Residential Tenancy Branch