



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL, FFL / MNDCT, FFT

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord seeks the following:

- A Monetary Order for loss under the Act, *Residential Tenancy Regulation*, or tenancy agreement under section 67 of the Act; and
- To recover the cost of the filing fee from the Tenants under section 72 of the Act.

The Tenants seek the following:

- A Monetary Order for loss under the Act, *Residential Tenancy Regulation*, or tenancy agreement under section 67 of the Act; and
- To recover the cost of the filing fee from the Landlord under section 72 of the Act.

The Landlord and one of the Two Tenants attended the hearing.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

Issues to be Decided

1. Are either party entitled to the requested compensation?
2. Are either party entitled to recover the cost of the filing fee for their Application?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began and ended on March 15, 2022.
- Rent was \$3,975.00 per month due on the fifteenth day of the month, per the tenancy agreement.
- A security deposit of \$1,987.00 was paid by the Tenants which the Landlord has returned, following a previous application to the Residential Tenancy Branch.
- There is a written tenancy agreement signed March 6, 2022 which was entered into evidence.
- There is no liquidated damages clause in the tenancy agreement.
- The Tenants never occupied the rental unit.

The Landlord testified as follows. They and the Tenants signed the tenancy agreement on March 6, 2022. The Tenants then paid the security deposit and first month's rent via two e-transfers on March 6 and March 7, 2022. The Tenants added their names to the natural gas and Hydro BC accounts and bought home insurance for the rental unit. The Tenants had wanted a five year tenancy, though settled on an agreement that renewed annually.

Further discussions regarding details of the tenancy took place between the parties and it was agreed the Tenants could add shelves and curtains to the rental unit and that repainting would take place after five years. The Landlord "wanted to be nice" given the tenancy agreement was already signed, so allowed the Tenants' requests.

The Tenants then requested to add further terms to the agreement, such as the tenants in the suite below the rental unit could not have a baby and could not watch television after 8 PM.

The parties had been set to meet on March 13, 2022, but the Landlord was unable to travel and let the Tenants know this. Later on March 13, 2022 the Tenants cancelled the agreement and said via email they would not be moving into the rental unit. The Landlord was able to get a new tenant from April 15, 2022.

The Landlord seeks compensation of \$3,975.00 from the Tenants which his equivalent to one month's rent, for the rent due March 15, 2022.

The Tenant did not dispute the tenancy agreement was signed on March 6, 2022 and the security deposit and first month's rent was paid via e-transfer. They testified that as the Landlord did not show up to the meeting arranged for March 13, 2022, they did not have the keys to the rental unit and the Landlord wanted the Tenants to share the garage with the tenants in the suite below the rental unit, they "backed out" of the agreement.

On April 6, 2022 the Landlord emailed the Tenants to advise they had managed to rent the rental unit from April 2, 2022 and they would be sending the security deposit and half a month's rent back to the Tenants, but the Landlord never did this.

The Tenant visited the rental unit shortly after March 13, 2022 and saw people there and vehicles outside which leads them to believe the Landlord was able to rent out the unit from March 15, 2022 and so has suffered no financial loss.

I was referred to the tenancy agreement for the Landlord's subsequent tenant entered into evidence which, whilst has a start date for the tenancy of April 15, 2022, was dated March 15, 2022. The Tenant feels the Landlord adjusted the tenancy agreement in some way, or added in different pages to make it seem they rented the unit out from a later date.

The Tenants seek the return of the \$3,975.00 they paid to the Landlord for the rent due March 15, 2022.

In response to the Tenant's testimony the Landlord testified that did not adjust the tenancy agreement for their new tenant in any way. Though their new tenants had access to the rental unit before April 15, 2022 to allow them to move in furniture as they were moving from Alberta, the tenancy agreement did not start until April 15, 2022 and they received rent accordingly. The vehicles could have been the tenants in the unit below the rental unit.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Are either party entitled to recover the requested compensation?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the parties must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Other party in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 67 of the Act states 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.

Based on the testimony of both parties and the evidence before me, I find that the Landlord and Tenants entered into a tenancy agreement which was signed on March 6, 2022 and was to commence on March 15, 2022. Under the tenancy agreement, monthly rent of \$3,975.00 was to be paid on the fifteenth day of the month.

I find the tenancy agreement does not specifically mention use of the garage, though I note parking for three vehicles is included as part of the agreement. Shared use of the garage, and other issues, such as hours the tenants in the lower suite use their television appears to have become contentious after the tenancy agreement was signed.

I find the Tenants attempted to unilaterally end the tenancy agreement via email on March 13, 2022 and requested the return of the security deposit and month's rent they

had paid. The issue of the security deposit was dealt with at a previous hearing and the Landlord retains the \$3,975.00 paid by the Tenants for the rent due March 15, 2022.

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

Therefore, the Tenants not occupying the rental unit does not absolve them of their obligation to pay rent when it is due. Additionally, section 26 of the Act states that a tenant must pay rent when it is due, whether or not the landlord complied with the Act, regulation or tenancy agreement, unless the tenant has the right to make deductions from the rent. I found nothing before me that indicated the Tenants had the right to withhold the rent due on March 15, 2022.

I find the Tenants did not have the right to unilaterally end the tenancy agreement on March 13, 2022, two days before the tenancy was set to commence. Section 44 of the Act sets out the ways a tenancy ends, which includes tenant's notice.

I find the tenancy was set to commence for at least a year and, as set out in Policy Guideline 30 – Fixed Term Tenancies, a tenant may not give notice to end the tenancy prior to the end of the fixed term, except for breach of a material term by the landlord. Even if ending the tenancy for a breach of a material term, a tenant must give proper notice to the landlord to end the tenancy on a date effective which is at least a month after the landlord receives the notice, as set out in section 45 of the Act.

Given the above, I find the Tenants were obligated to pay to the Landlord the rent due on March 15, 2022 per section 26 of the Act. I find that the Landlord noted the Tenants' attempt to revoke or otherwise cancel the tenancy which I find is in breach of section 45(2) of the Act, and the Landlord mitigated their losses by finding a new tenant to rent the unit from April 15, 2022.

In light of the above, I dismiss the Tenants' Application without leave to reapply. I grant the Landlord's Application and find they have proven on a balance of probabilities that they are entitled to the requested compensation.

As the Landlord already holds the amount requested, I issue no Monetary Order to the Landlord as none is required and authorize the Landlord to retain the \$3,975.00 paid by the Tenants for the rent due March 15, 2022.

Are either party entitled to recover the cost of the filing fee for their Application?

As the Landlord has been successful in their Application, I order the Tenants to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act. The Landlord is issued a Monetary Order accordingly.

As the Tenants' Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Landlord's Application is granted.

The Tenants' Application is dismissed without leave to reapply.

The Landlord is issued a Monetary Order for \$100.00 in respect of the recovery of the filing fee for their Application. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 14, 2023

Residential Tenancy Branch