Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order setting aside a notice to end the tenancy. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenancy had ended. I find that that the claim for an order setting aside a notice to end tenancy has been withdrawn or alternatively, that it was claimed in error. The hearing dealt exclusively with the monetary claim.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on January 1 and ended on or about March 1, 2012 and that the tenant had paid a $337.50 security deposit. They further agreed that the tenant provided his forwarding address to the landlord on March 11 and that on or about April 11, the landlord sent that amount to the tenant via registered mail, which was received by the tenant on April 12. The landlord testified that she mailed a cheque via regular mail on March 16, but it was returned to her as she had missed one number in the address. The tenant seeks an award equivalent to the security deposit pursuant to section 38(6)(b) of the Act.

The landlord argued that the tenancy does not fall within the jurisdiction of the Residential Tenancy Act because it was shared accommodation. The landlord stated that the rental unit is in a 2 bedroom suite within the landlord's home and rent includes utilities and furnishings. She stated that the tenant had the right to occupy one bedroom in the unit and was given the right to use common areas, but that this was not a legal right. The landlord asserted that she had not advertised for a tenant, but through a mutual acquaintance, agreed to rent the bedroom and use of the common areas to the tenant. She testified that previously she has rented rooms and provided a copy of an

advertisement which reads in part, “share bathroom, kitchen and living room with 2 other students in a fully contained suite with separate entrance”.

The landlord asserted that because the bedroom door does not have a lock, because she has unrestricted access to the suite from her home but one cannot access her home from the suite unless she unlocks the door, because the tenant was given a curfew and told he could have no guests or reproduce keys, this arrangement cannot be considered a tenancy.

The landlord testified that she is a realtor and runs a second business from her home and uses the living area of the suite for clients to sign paperwork and pick up product and therefore she shares the area with any tenants residing therein.

Analysis

Section 4(c) of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I am not persuaded that the landlord truly can be said to share the kitchen and bathroom with the tenant. The landlord has an independent kitchen and bathroom in her own separate living area and there is no evidence to show that she has at any time resided in the rental unit. I find that if she does use the kitchen and bathroom in the suite, it is not because she requires that access, but because it is convenient to do so while she or her clients are in the area.

The area over which the tenant had exclusive possession was the bedroom, regardless of whether it had a lock. The landlord in her testimony and in her evidence, particularly the advertisement she submitted, made it clear that other areas were to be shared with other students. This has persuaded me that it was never the intent of the landlord to herself share the kitchen or bathroom with the tenant, but just to access the living area as required to serve her clients. I find that the landlord’s use of the kitchen or bathroom, and I note that I am not persuaded that she has ever used those facilities during the tenancy, was merely a device to avoid the operation of the Act.

The landlord’s argument that the tenancy did not share characteristics with a typical tenancy is not persuasive. There are many tenancies in British Columbia in which parties rent a single room and share common areas to which a landlord has unrestricted access and there is nothing in the Act which requires that a tenant have exclusive possession over all areas he rents. The fact that the landlord imposed a number of

illegal rules on the tenant does not invalidate the tenancy or cause it to fall outside the jurisdiction of the Act.

For these reasons, I find that the tenancy falls within the jurisdiction of the *Residential Tenancy Act*.

I find that the tenancy ended on March 1, 2012 and that the landlord received the tenant's forwarding address on March 11, 2012. Section 38(1) required the landlord to return the security deposit to the tenant within 15 days of March 11. Although she may have attempted to return the deposit, her own error prevented that return and I find that because she did not mail the deposit to the correct address until April 11, she failed to act within 15 days as required by the Act.

I find that the landlord is obligated to pay the tenant double the amount of the security deposit pursuant to section 38(6) of the Act. As the tenant has already received the base amount of the deposit, I award the tenant $337.50. I also find that the tenant is entitled to recover the filing fee paid to bring his application and I award him $50.00.

Conclusion

The tenant is awarded $387.50. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that 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 *Residential Tenancy Act*.

Dated: May 30, 2012

Residential Tenancy Branch