



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LAT, O

Introduction

This hearing dealt with an application by the tenant for money owed or compensation due to damage or loss, to allow a tenant to change the locks, other and an application by the tenant for money owed or compensation due to damage or loss and suspend or set conditions on the landlord's right to enter.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Jurisdiction

Matters related to a tenancy associated with this landlord and rental property were heard February 14, 2012 under file 786653. **In this hearing the Dispute Resolution Officer determined that the rental unit(s) in the lower portion of the landlord's house were in fact tenancies and under the jurisdiction of the Residential Tenancy Act.**

'In her written submissions the landlord claimed that the Residential Tenancy Act does not apply to this tenancy because she supplies shared accommodation to her roommates. I do not accept the landlord's submissions that the Act does not apply. The tenant's evidence established that the landlord does not share kitchen or bathroom facilities with her tenants, thus the exception set out in section 4(c) of the Act does not pertain to this tenancy and I find that the tenancy falls within the jurisdiction of the Residential Tenancy Act.'

The landlord in this hearing brought the matter of jurisdiction forward once again and argued that as she freely uses the bathroom, kitchen and laundry room in the lower suite that these were not tenancies but shared accommodation and the *Act* did not apply. The tenant testified that the landlord did not use the bathroom or kitchen in the lower suite and only accessed the laundry room. The landlord acknowledged that she

has her own completely self contained suite on the upper floor of the house with its own bathroom and kitchen.

The landlord then argued that as she has 2 home based businesses and claims the lower suite on her yearly taxes as space associated with one of the businesses that the property is therefore commercial and did not fall under the jurisdiction of the Residential Tenancy Act.

The landlord also argued that if the tenant did not occupy the entire lower suite or pay the May 2012 rent why was the tenant's application considered valid. The landlord also attempted to categorize the tenancy as a license to occupy which it is not.

The landlord then argued that as the tenant is First Nations the tenant's room fell under the Federal jurisdiction of 'Indian Lands' and the *Act* did not apply.

The landlord also argued that as she did not have written tenancy agreements with her 'roommates' that the *Act* did not apply.

The landlord continually brought up and argued the issue of jurisdiction during the hearing and the landlord was repeatedly advised that the **4 rooms she rents out in the lower suite of her residence are tenancies and fall under the jurisdiction of this Act.**

Background and Evidence

This tenancy began February 1, 2012 with monthly rent of \$550.00 and the tenant paid a security deposit of \$275.00. The parties agreed that the tenant vacated the rental unit the first week of June 2012.

The tenant testified that the landlord disturbed the tenant's peace and quiet enjoyment from the start of the tenancy. The tenant stated that the landlord would follow her out of the house to write down the license plates of cars her family and friends drove, told the tenant that she could not have male visitors, accused the tenant of being a prostitute, called the tenant's mother and told her that the tenant was doing drugs, called the tenant's friends parent to tell them that the tenant was trouble, physically blocked the tenant's son from coming on the property, removed the hot plate in the kitchen that the tenants used and gave the tenant's cat away.

The tenant stated that the landlord never provided proper notice to the tenant to enter the tenant's room and would come and pound on the tenant's door demanding to show the suite.

The landlord testified that this matter does not fall under the *Act* as she shares the kitchen and bathroom in the lower suite with her 'roommates'. The landlord stated that

she also freely uses the laundry facilities in the lower unit. The tenant acknowledged that the landlord did use the laundry facilities and that they were the only facilities the landlord utilized in the lower unit. The landlord acknowledged that she resides in the upper suite which is self contained.

The landlord did acknowledge that she called the tenant's friends parents and the tenant's mother and stated that it was 'out of courtesy'. The landlord maintained that she never referred to the tenant as a prostitute, called the tenant names or told others that the tenant did drugs. The landlord stated that after the tenant left her cat alone for 4 days and locked in her room for the second time that the landlord opened the door and allowed one of the other tenants to take the cat and care for it.

The tenant's witness testified that he knew of 3 times when the landlord entered the tenant's room without notice to the tenant. The tenant's witness also confirmed that the landlord had called his parents and told them that the tenant was trouble.

The landlord stated that the hot plate was removed as the tenants were not keeping it clean and that she did not see this as a problem as the tenant had her own hot plate in her room.

The tenant stated that she also believed that the landlord had entered her room when she was away as small items like pens and knick knacks would be missing. The tenant understood that she had little proof that it was the landlord who entered her room however the tenant maintained that the door was always locked and only the landlord had a key. The landlord stated that the tenant often left her door unlocked but did not comment on how the landlord was aware of this fact as the landlord would have to try to gain access to the tenant's room to verify this. The landlord stated that she had never removed or taken any of the tenant's personal belongings.

The tenant stated that when she vacated the landlord only returned \$175.00 of the tenant's \$275.00 security deposit and advised the tenant that once the carpets in the room was cleaned, if the bill was less than \$100.00 the landlord would return the balance to the tenant. The tenant stated that the landlord has not yet had the carpet cleaned and believes that the room was re-rented the same week the tenant vacated. Both parties acknowledged that there is a signed agreement regarding the cleaning of the carpets.

The tenant stated that the landlord also demanded that her 'personal information' be returned and upon further questioning it was determined that the landlord had demanded to have the tenant's copy of the landlord's evidence returned to the landlord prior to this hearing.

Analysis

In her written submissions and arguments the landlord repeatedly claimed that the *Residential Tenancy Act* does not apply to this tenancy as it is shared accommodation and the landlord actively uses the bathroom and kitchen in the lower suite. The landlord then argued that the Act did not apply to this tenancy as the residence was commercial, under federal jurisdiction as "Indian land", a license to occupy and or because there are no written tenancy agreements in place.

I do not however the landlord's numerous submissions that the Act does not apply. This matter was clarified in the February 14, 2012 hearing and the tenant's evidence clearly established that the landlord does not share kitchen or bathroom facilities with her tenants and that the landlord has her own kitchen and bath in the upper unit that the landlord solely occupies, thus the exception set out in section 4(c) of the Act does not pertain to this tenancy and I find that the tenancy falls within the jurisdiction of the *Residential Tenancy Act*.

As jurisdiction was clearly established in a hearing from February 14, 2012 it concerns this officer that the landlord is purposely taking advantage of at risk tenants who may not know or understand their rights. As the landlord appears to have a pattern of this type of egregious behaviour, **I hereby Order that the landlord comply with the Act and all of its rules and regulations regarding any tenancies in the lower unit of the landlord's residence.**

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for compensation due to damage or loss.

It seems very apparent that as this landlord believes that her tenancies do not fall under the Act that the landlord is at liberty to essentially do as she pleases when it comes to the tenancies. The landlord does not respect the tenant's right to peace and quiet enjoyment and thinks nothing of removing services or facilities for frivolous reasons IE: hot plate not kept clean.

It also concerns this officer that the landlord feels that it is acceptable to 'call out of courtesy' and tell not only the tenant's mother but a parents of a friend of the tenants that the tenant was trouble.

I accept the tenant's testimony that the landlord freely used her key to enter the tenant's room and placed restrictions on what guests the tenant could have visit and I question the circumstances under which the tenant's cat was given away.

As this was a very short lived tenancy, I find that the tenant is entitled to the limited amount of \$500.00 or \$100.00 per month for 4 months for the reduced value of the tenancy for loss of the tenant's peace and quiet enjoyment.

Accordingly I find that the tenant is entitled to a monetary order for \$500.00.

As the landlord has not yet had the carpet in what was the tenant's room cleaned and the tenant is waiting for the balance of her security deposit to be returned, **I hereby Order that the landlord by July 21, 2012 either have the carpet cleaned and provide the receipt and any balance to the tenant or return the \$100.00 that has been withheld to the tenant.**

Conclusion

I hereby Order that the landlord comply with the Act and all of its rules and regulations regarding any tenancies in the lower unit of the landlord's residence.

I hereby Order that the landlord by July 21, 2012 either have the carpet cleaned and provide the receipt and any balance to the tenant or return the \$100.00 that has been withheld to the tenant.

I find that the tenant has established a monetary claim for **\$500.00** for loss of peace and quiet enjoyment and I grant the tenant a monetary order under section 67 of the *Act* for this amount.

If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: July 5, 2012

Residential Tenancy Branch