



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, OPT, MNDC, FF

Introduction

The hearing and the reconvened hearing dealt with the tenant's Application for Dispute Resolution for various remedies under the Residential Tenancy Act (the "Act"), including a request for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to comply with the Act, an order of possession for the rental unit and for recovery of the filing fee. Additionally the hearings dealt with the landlord's argument that the Act did not apply to this dispute.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues:

#1-Prior to the hearing, the landlord had raised the issue of jurisdiction as to whether the Residential Tenancy Act applied to this dispute. The parties were advised that I would conduct the hearing by first hearing from the parties on the issue of jurisdiction and then continue on with the tenant's application in the event I found jurisdiction to resolve this dispute. As a result, I commenced the hearing with the landlord proceeding first due to her contention that the Act did not apply, with response from the tenant.

Thereafter, testimony was taken on the tenant's application.

#2-Each party submitted evidence packages; however the landlord submitted her evidence packages to the rental unit following the landlord's changing of the locks to the rental unit; therefore the tenant stated she did not receive the landlord's evidence. The landlord pointed out that she served the evidence to the address listed on the tenant's application, which was the dispute address.

The landlord agreed that she received the tenant's evidence.

During the course of the hearing, the parties were questioned about the tenancy agreement, as both parties made reference to such agreement. The tenant stated that she was locked out of the rental unit and was not able to retrieve all her personal property, including documents such as the tenancy agreement.

The landlord stated that she thought she did have a copy of the tenancy agreement with this tenant as well as the tenancy agreement with a former tenant in the rental unit.

At the conclusion of the hearing, the tenant was given an option of me making a decision based upon the oral and written evidence of the parties, without her opportunity to review the landlord's evidence or having an adjournment. The tenant requested an adjournment.

In the interest of administrative fair play and natural justice, I concluded that the tenant was entitled to review the evidence of the landlord. Additionally, I concluded that a review of the tenancy agreement was a key factor in determining the issue of jurisdiction and the other issues contained in the application.

I therefore adjourned the hearing, with the instruction to the landlord that she was to submit all her evidence to the tenant to the address given by the tenant to the landlord in the hearing. I further instructed the landlord to fax to me the 2 tenancy agreements referred to above as soon as possible.

The tenant was informed that she was allowed to submit a response to the landlord's evidence, should she so choose, with a copy to the landlord, and the landlord was informed that she was allowed to submit a response to the tenant's response, should she so choose.

The parties were further informed that the purpose of the adjourned hearing was to conduct discussions covering the evidence, if necessary.

Subsequent to the conclusion of the hearing, the landlord submitted evidence, which included two tenancy agreements as well as other documents. I have reviewed the tenancy agreements and disregarded all other documents from the landlord, as they were not requested or allowed.

I did review the tenant's evidence in response to the landlord's evidence.

At the reconvened hearing, the evidence was discussed and no party raised any issue regarding service of the evidence.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?

2. Has the applicant established an entitlement to a monetary order and to recover the filing fee?

Background and Evidence

The tenant began residing in the dispute address on October 1, 2011, she paid monthly rent payments of \$550.00 to the landlord, the tenant paid a security deposit of \$275.00 on or about October 1, 2011, and the residency by the tenant at the dispute address ended on or about June 8, 2012, when the landlord changed the locks to the dispute address.

The residential property is a home rented out by the landlord, with the bedrooms on the main floor being rented to tenants as a single room occupancy. The tenant occupied the master bedroom with ensuite washroom on the main floor.

Evidence regarding jurisdiction:

The landlord contended that the Act did not apply to this dispute as she shared washroom and kitchen facilities with the tenant.

In support of this contention the landlord said that she lived in a converted cottage adjacent to the residential property, further saying that her office and a washroom was on the main floor in the residential property.

The landlord said that she used the kitchen on the main floor as well as the washroom, which supported her contention that the Act does not apply to this dispute. The landlord further said that when the tenant agreed to rent the rental unit, she was aware that the landlord used the home office.

The landlord agreed that she did not use the kitchen very much, mainly on the weekends when she baked something in the oven at the residential property, such as chicken, fish and casseroles, and returned to the cottage after cooking. The landlord confirmed that she did not prepare food in the kitchen, or have any dishes, pots, pans, cookware, utensils, oils, spices, food or cupboard items in the kitchen in the residential property.

The landlord also referred to photographic evidence of a picture of the kitchen area in the cottage, which showed a full sized refrigerator, counter space and doubled sided sink.

In response, the tenant said that she has never seen the landlord use the kitchen in the entire length of the tenancy, that she has never smelled cooking odours in the kitchen created by the landlord and has never seen any of the landlord's cooking tools, food or other signs that the landlord used the kitchen.

The tenant denied being informed by the landlord that the landlord would use the kitchen and that she has her own master bathroom and has never shared either the kitchen or the bathroom with the landlord.

The tenant further submitted that the landlord did provide notice whenever she would enter the residential property, although it was never the full 24 hour written notice.

Evidence regarding tenant's application for dispute resolution:

The tenant applied to obtain an order of possession for the rental unit and for an order requiring the landlord to comply with the Act; however, according to the tenant the landlord changed the locks to the rental unit on or about June 8, 2012, which caused the tenant to seek alternate accommodations. Therefore the tenant has withdrawn her request for those orders and the hearing proceeded on the tenant's application on her monetary claim.

The tenant's monetary claim was originally \$2775.00, comprised of \$550.00 for the last month's rent in accordance with having received a 2 Month Notice to End Tenancy for Landlord's Use of the Property, reimbursement of June's rent for \$550.00, her security deposit of \$275.00, transportation costs incurred by having been locked out of the rental unit and driving to and from a friend's house in another town, \$750.00 for compensation for the stress of having suddenly lost her home and the daily 3 ½ hour drive to and from the friend's home, \$150.00 for moving expenses and the filing fee of \$50.00.

Since the application, the landlord has refunded the tenant \$330.00 as reimbursement for June's rent.

In support of her application, the tenant said that the landlord put a lock around every thermostat on the main floor, preventing the tenant from adjusting the heat. When the tenant requested that the landlord remove the locks, the landlord responded by issuing the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"). The Notice was dated June 5, 2012, for an effective end of tenancy date of August 31, 2012.

The tenant stated that after receiving the Notice, when she was away she received a text message on June 8, 2012, from the landlord informing her that the locks to the rental unit had been changed and that she was being evicted.

The tenant said that as she was evicted without notice, she had to immediately find a place to live, which happened to be with a friend in another city. Due to the landlord's illegally changing the locks, the tenant was then required to travel every day for her job for 3 ½ hours in total, according to the tenant.

After much communication with the landlord, the tenant said she was able to retrieve her belongings and her cat from the rental unit.

The tenant said she was entitled to moving expenses, due to the short notice and being locked out of her home.

The tenant said that the security deposit has not been returned to her.

In response, the landlord acknowledged having changed the locks when the tenant began acting "irrationally," which she claimed was on the advice of the police department, confirmed by the Residential Tenancy Branch ("RTB"), after informing her that the Act did not apply to this tenancy or occupancy of the rental unit.

The landlord confirmed having received the tenant's written forwarding address on July 4, 2012 and not returning the security deposit, as the Act did not apply to this relationship with the tenant.

Analysis on Jurisdiction

In order for me to make a decision on the tenant's application, I must first decide the issue raised by the landlord, that this dispute is excluded from the jurisdiction of the *Residential Tenancy Act* due to her contention that, as the owner, she shared kitchen and bathroom facilities with the tenant. Section 4 (c) of the Act states that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

After a careful consideration of the evidence, I find that this dispute does fall under the jurisdiction of the Residential Tenancy Act. In reaching this conclusion, I considered whether or not the parties shared the kitchen in the residential property and I cannot conclude that they do upon a balance of probabilities.

The landlord does not having any cooking tools, utensils, cookware, food, refrigerator contents, dish cleaning soaps or any other item normally associated with using a kitchen. I accept the tenant's testimony that she has never seen the landlord using the kitchen or seen any signs of the landlord cooking in the kitchen. I also accept the tenant's testimony that she was never informed that the landlord would be using the kitchen in the residential property.

I therefore find the landlord submitted insufficient evidence to prove that she shared the kitchen with the tenant.

Further there was no dispute that the tenant had her own private master bathroom and that the landlord did not use this bathroom.

As I have found that the Act applies to this dispute, I find that I have authority to make a decision on the tenant's application.

Analysis on tenant's monetary claim

I find that, on a balance of probabilities, that the landlord has very clearly breached several sections of the *Residential Tenancy Act*.

I find the landlord had no authority to change the locks to the rental unit and that she did so unlawfully, depriving the tenant of exclusive use and possession of the rental unit and her personal property, including her cat, causing the tenant to immediately look for a place to live. I find this breach by the landlord to be egregious.

A landlord's obligation under the Act is to provide the premises as agreed to. If the tenant is deprived of the use of all or part of the premises through no fault of her own, the tenant may be entitled to damages. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

I therefore find that the tenant is entitled to be further reimbursed for June's rent for being deprived of the use and possession, in the amount of \$75.84. I considered that the landlord reimbursed the tenant the amount of \$330.00 for June's rent; however I find that the tenant was entitled to be reimbursed the amount of \$405.94 ($\$550.00 \text{ monthly rent} \times 12 \text{ months} = \$6600.00 \text{ yearly rent} \div 365 \text{ days} = \$18.08 \text{ daily rate} \times 8 \text{ days in June the tenant had use and possession of the rental unit} = \144.16 ; $\$550.00 - \$144.16 = \$405.84$; $\$405.84 - \$330.00 \text{ paid by landlord} = \75.84).

As to the tenant's claim for compensation for the stress and hardship in suddenly being locked out of her home, I considered the Residential Tenancy Branch Policy Guideline, which states that an award for damages may be awarded for the value of a general loss where it is not possible to place an actual value on the loss or injury.

I find that to be the case here. The tenant did not supply proof of a quantifiable loss, such as for rent on another home or gas receipts, but I accept that she was forced into a situation of finding a place to live on an emergency basis due to the unlawful lock change by the landlord. I find it reasonable that on such short notice, the only accommodation available to the tenant was with a friend, who in this case, lived in another town and that the tenant incurred costs for travel back and forth and to pay the friend for extra expenses.

As the tenant was entitled to remain in the home until at least August 31, 2012, pursuant to the 2 Month Notice to End Tenancy for Landlord's Use of the Property, if in fact the Notice was valid, I find a reasonable amount of damages for a general loss to the tenant to be \$550.00, the value of one month's rent.

As to the tenant's claim for compensation for having received the 2 Month Notice, under the Act a tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of the Property is entitled to receive on or before the effective date of the Notice compensation equal to one month's rent.

I accept the testimony of the tenant and the confirmation of the landlord that the tenant was served with the Notice and has not received this compensation. I therefore find that the tenant is entitled to monetary compensation the equivalent to the monthly rent, \$550.00.

I also accept the undisputed evidence of the tenant that the tenancy ended on June 8, 2012, when the landlord unlawfully changed the locks to the rental unit, the landlord was provided the tenant's written forwarding address July 4, 2012, and has not returned the tenant's security deposit or filed an application claiming against the security deposit.

I therefore find that the landlord failed to comply with the *Act* and I find the tenant is entitled to a return of her security deposit of \$275.00, doubled, pursuant to Section 38(6) of the *Act*.

I also find that the tenant is entitled to recover her filing fee of \$50.00, due to her successful application.

I dismiss the tenant's claim for moving expenses, as the tenant failed to submit receipts or proof of a loss for the same.

Conclusion

I find the tenant has established a total monetary claim in the amount of \$1775.84, comprised of \$75.84 for further reimbursement of the June 2012 rent, \$550.00 for a general loss for losing her home suddenly through the landlord's unlawful lock change, \$550.00 for compensation for receiving a 2 Month Notice to End Tenancy for Landlord's Use of the Property, \$550.00, which is her security deposit, doubled, and the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$1775.84, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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 31, 2012.

Residential Tenancy Branch