Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gentle Waters / Silver Springs Residence
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Documentary evidence is limited to documents submitted by the tenant which include an application for dispute resolution, a monetary order worksheet, and a "damage report," in addition to a letter submitted by the landlord dated September 18, 2013.

In his letter, the landlord disputes that this dispute falls within the jurisdiction of the Act. The landlord's letter reads in part as follows:

> [the facility] does not fall under the auspices of the Residential Tenancy Act in B.C. The facility is a seniors' housing complex providing services for its residence [sic] such as 3 meals a day, housekeeping and laundry, social activities, and 24 hr supervision and security. The tenant does not have exclusive and quiet possession of his unit because of these services and monitoring provided.
>
> The applicant never entered into a residential tenancy agreement but an accommodation agreement with the understanding that these services were part of the service fees being paid monthly.

During the hearing the landlord's agent made reference to a previous dispute brought to the Residential Tenancy Branch concerning this facility, in relation to which the Adjudicator (then – Dispute Resolution Officer) declined jurisdiction.

The parties agree that the tenancy began on or about July 1, 2008, when the tenant occupied unit # 233 and paid a monthly rent of $1,200.00. A security deposit of $500.00 was collected. Later, the tenant relocated to unit # 2, where he paid a monthly rent of $1,100.00. There is no move-in condition inspection report in evidence.

Tenancy ended on May 31, 2013, and the landlord's agent testified that the tenant moved to a facility providing a comparatively higher level of care. It is understood that a forwarding address was provided in writing either on or before July 31, 2013.

While there is no move-out condition inspection report in evidence, the landlord completed a "damage report." A notation on the report indicates that it was requested on July 25, 2013. Briefly, the landlord assessed the cost of repairs to damage in the tenant's unit to be $257.67, which was comprised of gyproc, paint, baseboard and labour. The landlord retained this amount from the tenant's security deposit and repaid the balance to the tenant of $242.33 ($500.00 - $257.67).

The tenant takes the position that he is entitled to the double return of the security deposit, as he did not consent to the landlord's retention of any portion of it, and it was not repaid to him within the time required by the Act.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 2 of the Act addresses **What this Act applies to**:

> 2(1) Despite any other enactment but subject to section 4 *[what this Act does not apply to]*, this Act applies to tenancy agreements, rental units and other residential property.
>
> (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

Section 4 of the Act speaks to **What this Act does not apply to**, in part as follows:

4 This Act does not apply to

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

(c) living accommodation in which the tenant shares a bathroom or kitchen facilities with the owner of that accommodation,

(d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and

(ii) are rented under a single agreement,

(e) living accommodation occupied as vacation or travel accommodation,

(f) living accommodation provided for emergency shelter or transitional housing,

(g) living accommodation

(i) in a community care facility under the *Community Care and Assisted Living Act*,

(ii) in a continuing care facility under the *Continuing Care Act*,

(iii) in a public or private hospital under the *Hospital Act*,

(iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,

(v) in a housing based health facility that provides hospitality support services and personal health care, or

(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

(h) living accommodation in a correctional institution,

(i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,

(j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or

(k) prescribed tenancy agreements, rental units or residential property.

Related to the absence of a written tenancy agreement, section 12 of the Act provides that **Tenancy agreements include the standard terms**:

12 The standard terms are terms of every tenancy agreement

(a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and

(b) whether or not the tenancy agreement is in writing.

Relevant to the services and facilities associated with this dispute, section 1 of the Act defines “service or facility” as follows:

“service or facility” includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

(a) appliances and furnishings;

(b) utilities and related services;

(c) cleaning and maintenance services;

(d) parking spaces and related facilities;

(e) cablevision facilities;

(f) laundry facilities;

(g) storage facilities;

(h) elevator;

(i) common recreational facilities;

(j) intercom systems;

(k) garbage facilities and related services;

(l) heating facilities or services;

(m)housekeeping services;

Based on the documentary evidence before me, the affirmed testimony of the parties, and in consideration of all the above statutory provisions, I find that this dispute falls within the jurisdiction of the Act. Specifically, I find that none of the provisions set out in section 4 of the Act apply to the circumstances of this dispute. Further, I find that I am not bound by a previous decision of a Dispute Resolution Officer / Arbitrator.

For information, the attention of the parties is also drawn to the following statutory provisions:

The **Act**

Section 23: **Condition inspection: start of tenancy or new pet**
Section 24: **Consequences for tenant and landlord if report requirements not met**
Section 35: **Condition inspection: end of tenancy**
Section 36: **Consequences for tenant and landlord if report requirements not met**

The **Regulation**

Section 20: **Standard information that must be included in a condition inspection report**

Section 21: **Evidentiary weight of a condition inspection report**

There is no evidence before me of either a move-in or move-out condition inspection report which includes the "standard information that must be included in a condition inspection report."

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, I find that the landlord neither repaid the full security deposit nor filed an application for dispute resolution within 15 days after July

31, 2013, which I find is the date after the end of tenancy when the tenant provided his forwarding address in writing. In the result, I find that the tenant has established entitlement to the double return of his security deposit. As the tenant has succeeded with his application, I find that he has also established entitlement to recovery of the filing fee. In summary, I find that the tenant has established a total claim of **$811.44**, which is calculated as follows:

$500.00 *(security deposit)* x 2 = $1,000.00 *(doubling provisions of the Act)*

$3.77 *(interest accrued on original amount of security deposit)*

Sub-total (i): **$1,003.77** *($1,000.00 + $3.77)*

MINUS: **$242.33** *(amount already repaid to tenant)*

Sub-total (ii): **$761.44** *($1,003.77 - $242.33)*

PLUS: **$50.00** *(filing fee)*

Total Owed: **$811.44** *($761.41 + $50.00)*

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **$811.41**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims 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: December 13, 2013

Residential Tenancy Branch