



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent and loss of rent, as well as an order to retain the security deposit in satisfaction of the claim.

The hearing was also to hear a cross application by the tenant seeking the return of double the security deposit and damages including the cost of repairs, moving expenses and the cost of copying a key fob.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Issue – Jurisdiction

The party identified as the “tenant” raised the issue of jurisdiction and stated that the person acting as their *landlord* was merely a “leaseholder” who only has the right of possession under contract from the owner, but did *not* have the owner’s permission and authorization to sublet the unit to this tenant.

Therefore, the tenant’s position is that the tenancy issues under dispute would not be under the jurisdiction of the Act. The tenant feels that the dispute should instead be litigated through BC Small Claims Court. The tenant made reference to copies of communications between the landlord/leaseholder, (their landlord) and the actual owner of the suite. The tenant alleges that the written communications verify that no permission to sublet was ever granted to their landlord by the owner and further illustrate that the sub-rental was arranged without permission of the owner and beyond the legal authority of their landlord.

The tenant testified that, if they had known that the person purporting to be a landlord was actually only a tenant herself without any authority from the owner to sub-rent the unit to them as a third party, they never would have signed the lease agreement.

The landlord testified that, the owner was aware that she had sub-rented the suite and permitted it. The landlord's position is that the copies of the communications in evidence support this fact.

In regard to the allegation made that the tenancy relationship in this case was beyond the jurisdiction of the Act because the unit was rented out by a person who was only a tenant herself, without the knowledge and authority of the true owner/landlord, I find that this is not the key issue. The important question to be considered is whether or not the parties meet the definitions of "*landlord*" and "*tenant*" under the Act. I find that if they do, then the tenancy is governed by the Act.

The *Residential Tenancy Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, **other than a tenant occupying the rental unit**, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit; (My emphasis)

(d) a former landlord, when the context requires this.

I find that this landlord is a tenant who is entitled to possession of the rental unit, does not currently reside in the unit but exercises the powers of and performs the duties of a landlord under the Act.

Based on the above definition, I find that the person who signed the tenancy agreement as “*landlord*” in renting this unit to the tenant, does satisfy the definition of landlord under the Act.

The tenant further alleged that the tenancy was not valid under the Act because the strata plan bylaw restricts residency to no more than 2 persons. According to the tenant, the landlord knowingly rented the unit to them, fully aware that there would also be a child and a second adult living in the unit, thereby exceeding the occupancy rules.

The tenant pointed out that, because of this, the tenancy would not be considered to be a valid tenancy under the law and, as such the tenancy terms were not enforceable under the Act. Furthermore, according to the tenant, this made it necessary for them to vacate the unit on short notice before the lease expiry date.

The landlord testified that the rental agreement was indeed based on the unit being occupied by only one adult tenant and a child as the sole inhabitants. The landlord acknowledged that, once the tenant, the child and the second adult had already moved in, she chose not to make an issue of the matter and allowed the addition of an extra adult. The landlord’s position is that, nonetheless, this tenancy is a valid agreement under the Act and the tenant violated both the Act and the contract by vacating the unit earlier than the fixed term they agreed upon.

With respect to the impact of this contested issue on jurisdiction, I find that, even if I accept that the tenancy agreement signed by the parties specifically limits occupancy to two residents and if I also accept that there may be a limitation of number of occupants allowed under the strata rules as well, I find that these factors are not in any way relevant to the question of whether or not the Residential Tenancy Act would apply to the tenancy.

Section 1 of the Act, defines “tenancy agreement” as follows:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

I find that the landlord’s alleged violation of the tenancy contract or strata bylaw by allowing subtenants to exceed the occupancy rules, even if found to be true is not a relevant factor affecting the jurisdictional status of this tenancy.

Based on the above facts, I find I do have authority to hear this application because this tenancy in the case before me is governed by the Residential Tenancy Act.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of rent?

Is the tenant entitled to monetary compensation in damages?

Background and Evidence

The landlord testified that the tenancy began on September 15, 2013 as a fixed term tenancy to end on March 31, 2014. The rent was \$1,900.00 and a security deposit of \$1,900.00 was paid.

The landlord testified that on March 3, 2014, the tenant vacated the rental unit without paying rent for the month of March, 2014 thereby terminating the fixed term prior to the expiry date. The landlord is claiming compensation for \$1,900.00 rent for March 2014. The landlord testified that the tenant also owes for the extra cost of hydro and for a damaged door handle. The landlord is claiming a total of \$2,130.00.

The tenant disputed the landlord's claim for loss of rent. The tenant testified that they were forced to vacate the unit early because the number of people in the unit was violating the strata rules. The tenant testified that they were also unable to stay in the rental unit because, despite initially giving them permission to have the tenant's father move in as a fourth occupant, the landlord later refused to allow this additional fourth occupant. The tenant testified that they then felt they had no choice but to move out immediately under those circumstances.

In addition to the issues described above, the tenant stated that a situation arose in February 2014 with respect to a problem with the bathroom. The tenant testified that the landlord failed to take care of an emergency repair matter in a timely fashion, leaving the family without bathroom facilities for most of the day. The tenant testified that the tenant finally had to have the door lock removed by a locksmith at a cost of \$78.75 so that they could access the facilities. The tenant feels entitled to be compensated.

The tenant testified that the landlord failed to post an emergency contact number as required under the Act. The tenant testified that, during their tenancy, the landlord refused to respect their right to quiet enjoyment and intruded on their privacy at will. The tenant testified that the landlord also overcharged them for the security deposit which is supposed to be limited to half a month rent, and collected \$1,900.00 instead of \$850.00. The tenant testified that the landlord did not refund the security deposit within 15 days after they left as required under the Act and therefore the tenants believe they are entitled to a refund of double the security deposit.

The tenant is claiming \$3,969.10 in compensation including \$3,800.00 for a refund of double the security deposit, \$78.75 for the locksmith charges, \$60.35 moving expenses and \$30.00 for the cost of making a second copy of the key fob.

The landlord did not agree with the tenant's claims. The landlord testified that the tenant's moving expenses resulted solely from the tenant's sudden decision to vacate without giving adequate notice under the Act. With respect to the locksmith costs incurred by the tenant the landlord's position is that the tenant did not give the landlord adequate time to finish making repairs to the bathroom door lock and instead chose to take matters into their own hands, removing the hardware and causing more damage.

Analysis: Security Deposit Amount.

I find that the landlord is holding a security deposit in trust for the tenants in the amount of \$1,900.00. I find that the tenant vacated on March 3, 2014 and the landlord made the application for a monetary claim and to retain the tenant's security deposit in partial satisfaction of the claim on March 13, 2014.

With respect to the return of the tenant's security deposit, I find that the Act states that a landlord may keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant within 15 days after the tenancy had ended and they received the tenant's written forwarding address.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that the landlord made their claim to keep the security deposit within the 15-day deadline. Therefore the tenant is credited with a deposit of \$1,900.00 being held by the landlord and is not entitled to a refund of double the security deposit.

Analysis: Landlord's Monetary Claim for Rent

Section 45 of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy,** and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(My Emphasis)

I find that the tenant was in violation of the tenancy agreement by terminating the tenancy prior to the expiry of the fixed term.

In regard to the tenant's argument that they were forced to leave due to the landlord's violation of the tenancy agreement, I find that section 45(3) states that, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date after the date the landlord receives the notice.

However, to establish that a breach of a material term in the tenancy has occurred the following three components must exist:

- There must be a clear term contained in the tenancy agreement
- This term must fit the definition of being "*material*"
- There must be a genuine breach of the material term.

Determining the materiality of a term requires a focus upon the importance in the overall agreement and it falls on the person relying on the term to present evidence that it qualified as a material term to both of the parties signing the agreement at the time.

The tenant stated that there were various transgressions of both the Act and the agreement by the landlord. However, I find that, even if I accept the tenant's testimony as true, none of the alleged violations by the landlord pertain to a material term.

I find that the tenant's violation of the fixed term agreement was not triggered by a breach of a material term by the landlord and the tenant cannot rely on this reason for moving nor to limit their liability to compensate the landlord for losses that resulted from their actions.

I find that the tenant terminated the tenancy prior to the end of the fixed term and this fact caused the landlord to incur a loss of rent for the month of March 2014 in the amount of \$1,900.00, for which the landlord is entitled to be compensated.

Analysis: Other Damages Claimed

An applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In regard to the landlord's claim for the cost of the broken door handle, I find that there is not sufficient proof that the claim satisfies element 2 of the test for damages. Repairing and maintaining door hardware is a landlord's responsibility under the Act. In regard to the landlord's claim for utility charges, I find that the landlord has not proven that these utility charges were pursuant to a term under the tenancy agreement signed by the parties. Given the above, I find that the landlord's claims for damages, other than the \$1,900.00 loss of rent for March, 2014, must be dismissed.

In regard to the tenant's monetary claims, I find that in order to justify reimbursement for the emergency repair of the lock, the tenants would need to prove that they complied with section 33 of the Act that outlines the rights and responsibilities in regard to emergency repair situations. I find that not all of the criteria under section 33 was followed by the tenant before they took over the

repair. For this reason I find that the tenant's claim for reimbursement for their expenditures does not satisfy the test for damages and must be dismissed.

In regard to the tenant's claim for moving costs, I have already found that the tenant vacated the unit in violation of the tenancy agreement that they signed and that the landlord's alleged violations of the Act or agreement did not justify the tenant's noncompliant termination of the tenancy. Therefore, the tenant's claim for reimbursement of moving costs is not supported and must be dismissed.

I find that the tenant's claim for the cost of the extra key fob, is not warranted as the tenancy agreement specifically states, at paragraph 12 that the tenant is only entitled to one key fob.

Based on the above. I find that both the landlord's and the tenant's above monetary claims for damages must be dismissed.

I find that the landlord has established a total monetary claim of \$1,900.00 for the loss of rent for March 2014. I order that the landlord retain the tenant's \$1,900.00 security deposit in full satisfaction of the monetary claim.

The remainder of both the landlord's and the tenant's claims are dismissed without leave to reapply. I further order that each party is responsible for their own cost of the application.

Conclusion

The landlord is partially successful in the application, and granted an order to retain the tenant's security deposit in full satisfaction of the monetary claim. The remainder of landlord's application is dismissed. The tenant's application is dismissed in its entirety without leave.

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 07, 2014

Residential Tenancy Branch

