



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant's application (filed September 12, 2014): MNSD; MNDC; FF

Landlord's application (filed September 19, 2014): MND; MNDC; MNR; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages and unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenant with its Notice of Hearing documents and copies of its electronic and documentary evidence by registered mail. The Landlord confirmed that the Tenant was able to open the CD provided in evidence.

It was also determined that the Tenant served the Landlord with her Notice of Hearing documents by registered mail. The Tenant provided documentary evidence, which the Landlord's agent said she did not receive. I advised the Tenant that I would take her verbal testimony with respect to the contents of her documentary evidence.

Issues to be Decided

1. Is the Landlord entitled to compensation for loss of revenue due to the Tenant not moving into the rental property?
2. Is the Tenant entitled to a monetary award for double the amount of the security deposit?

Background and Evidence

The Tenant gave the following testimony:

The Tenant stated that she and her boyfriend (the co-tenant) looked at rental unit #24 on August 2, 2014, and filled out an application to rent #24. The Tenant paid a deposit in the amount of \$675.00, for the tenancy to start September 1, 2015. No tenancy agreement was signed by the parties.

The Tenant testified that the Landlord's agent called the Tenant on August 12, 2014, and said that she had "switched" the Tenant to unit #15, because the Landlord had rented out unit #24 to someone else for August 12, 2014. The Tenant stated she told the Landlord that she wanted to see unit #15 before signing the tenancy agreement, but that the Tenant never saw unit #15.

The Tenant asked about return of the deposit, but the Landlord's agent told her that she had forfeited it because she didn't cancel her application within 5 days of signing it.

The Tenant stated that she gave the Landlord her forwarding address in an e-mail on August 18, 2014, and again by registered mail on August 19, 2014. The tracking number was provided. The Tenant testified that she never agreed that the Landlord could keep any of the deposit.

The Landlord's agents gave the following testimony:

The Landlord's agents testified that the Tenant was shown unit #24 because it was the only unit available at the time. They testified that on August 12, 2014, they asked the Tenants if they wanted unit #15 instead because the Landlord had another person interested in unit #24, who could move in right away. The Landlord's agent testified that they told the Tenants that they would refund the deposit if the Tenants didn't like unit #15. The Landlord's agents testified that the two units were very similar, except there was a new kitchen and floor in unit #15. They stated that they did not rent unit #24 to the other party until the Tenant's boyfriend, the co-tenant, said there would be no problem.

The Landlord's agents testified that they got a voice mail from the Tenant on August 17, 2015, advising that they would not be moving in because she had lost her job and couldn't afford the rent. They submitted that they were not able to rent unit #15 until October 1, 2014 and therefore they lost one month's revenue. They testified that they wanted to file an Application for Dispute Resolution to keep the security deposit, but that they did not receive the Tenant's forwarding address until September 18, 2014, when they received the Tenant's Notice of Hearing package.

The Tenant gave the following response:

The Tenant stated that unit #24 was the superior unit because it was an end unit. She stated that from the photographs of unit #15 that the Landlord provided, she also saw that there was no shelving in the bathroom in unit #15, but that unit #24 had shelving.

The Tenant reiterated that she paid the deposit for unit #24 and stated that the Landlord crossed out #24 and substituted #15 on the Application for Tenancy.

Analysis

I accept both parties' submissions that the Tenant and her co-tenant filled in an Application for Tenancy with respect to unit #24. I find that the Landlord did not provide sufficient evidence that either tenant agreed to switch to unit #15. No such agreement was in writing and in fact no written tenancy agreement at all was signed between the parties.

The Act defines a tenancy agreement as, "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 license to occupy a rental unit.

The Application for Tenancy provides, in part, "This offer is subject to acceptance by the Landlord or its Nominee and is open for acceptance until 6:00 p.m. on the fifth (5th) day following the date of this application. Should I/We cancel prior to the date of acceptance, then I/We agree that \$50 will be retained as the liquidated damages for processing this application. Cancellation after the fifth (5th) day will result in forfeiture (sic) of the applicant's deposit."

Section 15 of the Act provides that a landlord must not charge a person anything for accepting an application for a tenancy; processing the application; investigating the applicant's suitability as a tenant; or accepting the person as a tenant. I find that the Landlord breached Section 15 Act.

Section 20(a) of the Act provides that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into a tenancy agreement.

I find that in accepting the deposit, the Landlord entered into an oral tenancy agreement with the Tenant and co-tenant to rent unit #24 and that the Landlord breached the Act by failing to provide the unit that was agreed upon.

I find that the Landlord breached the Act first and that it is not entitled to compensation from the Tenant for loss of revenue.

The Landlord's Application for Dispute Resolution is dismissed in its entirety.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, **a landlord has 15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or

2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

The tracking number provided by the Tenant indicates that the Landlord received the Tenant's forwarding address in writing on August 21, 2014. In this case, I find that the Landlord applied against the security deposit 29 days after receipt of the Tenant's forwarding address. I find that the Tenant is entitled to compensation under Section 38(6) of the Act, in the amount of **\$1,350.00**.

The Tenant has been successful in her Application, and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

The Landlord's Application is dismissed **without leave to reapply**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,400.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (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: April 16, 2015

Residential Tenancy Branch

