



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC

Introduction

The Applicant is applying for return of the security deposit and compensation for damage or loss under the Act, regulation or tenancy agreement.

This matter was originally scheduled to be heard on March 31, 2015. The Respondent submitted that the Residential Tenancy Act had no jurisdiction over this tenancy because he owned the subject property and shared kitchen and bathroom facilities with the Applicant. The Applicant disputed the Respondent's submissions.

In addition, there were issues with respect to service of documentary evidence. I ordered that this matter be adjourned and that the parties serve each other with copies of their documentary evidence and that the Applicant provide the Residential Tenancy Branch with copies of their documentary evidence. An Interim Decision was provided to the parties on April 10, 2015, which should be read in conjunction with this Decision.

The parties gave affirmed testimony at the Hearing and the reconvened Hearing.

It was determined that the Respondent was served with the Applicant's documentary evidence by registered mail sent on April 1, 2015. On June 2, 2015, The Respondent provided late evidence to the Residential Tenancy Branch. The Respondent did not serve the Applicant with this late evidence and therefore, I have not considered it. I advised the Respondent that he was welcome to provide his oral testimony with respect to the contents of his documentary evidence.

Preliminary Issue – Jurisdiction

The Respondent questions jurisdiction under the provisions of Section 4(c) of the Act, which provides: "This Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation".

The Respondent testified that he is the sole owner of the rental property and that he shared the kitchen and bathroom facilities with the Applicant.

The Applicant submitted that the Act does apply for the following reasons:

1. The parties entered into a tenancy agreement, a copy of which he provided in evidence.

2. The parties met for a Condition Inspection at the beginning and at the end of the tenancy.
3. The Tenant paid a security deposit at the beginning of the tenancy, in the amount of \$250.00.
4. The Respondent gave the Applicant three notices to end the tenancy between December, 2013, and July, 2014.

The Applicant stated that none of the above would be required if this was not a residential tenancy. He disputed that the Respondent lived in the rental unit. He testified that the Respondent was often on the premises during renovations, but that he lived elsewhere. The Applicant stated that he shared the premises with occupants other than the Respondent. The Applicant stated that he moved out of the rental unit in July, 2014, after receiving a 2 Month Notice to End Tenancy for Landlord's Use.

The Applicant testified that an Intent to Rent form dated January 14, 2014, and which the Respondent signed as "landlord" indicates that monthly rent is \$525.00 and that the total (if shared) is "N/A".

The Applicant stated that for a period between December 18, 2013, and January 21, 2014, he could not use the upstairs bathroom because of renovations that were taking place which included renovations to the bathroom. The Applicant testified that he was unable to use the only other bathroom at night because it was attached to a bedroom in the lower part of the house which was used by two other occupants. He stated that at night time, he had to go to a local 24 hour business to use the toilet. The Applicant denied sharing the kitchen with the Respondent during his tenancy.

The Respondent stated that he used the Residential Tenancy Branch's forms because he was not aware that this tenancy would not fall under the Act until he spoke to an Information Officer at the Branch after receiving the Applicant's Notice of Hearing package. He stated that he has used the same forms in the past when renting rooms to international students. He testified that he has resided at the property since he purchased it in May, 2011, and that anyone staying at the property had to share kitchen bathroom and laundry facilities with him. The Respondent acknowledged that he stayed overnight at a friend's house during the time of the tenancy, but would sometimes stay overnight at the rental property, leaving for work at 7:30 a.m. and returning at 10:30 – 11:00 at night.

Decision on Jurisdiction

The Respondent provided insufficient evidence that he is the owner of the rental property (for example, a copy of a Land Title search confirming he is owner). In any event, even if the Respondent is the owner of the rental property, **I find that this tenancy is not exempt under Section 4(c) of the Act.**

Information Officers provide information on the basis of hearing from one of the parties only. They do not have the advantage of hearing from both parties, and give information based only on the information provided to them. I accept that the rental unit may be the Respondent's legal residence; however, based on the evidence provided by both parties, I find it probable that the Respondent was not residing at the rental property for a continuous period during the tenancy

and did not share kitchen and bathroom facilities with the Applicant. I find that the rental property was not the Respondent/Landlord's primary residence during the tenancy.

I conclude that the Act does apply to this tenancy and I proceed to consider the issue raised by the Applicant/Tenant.

Issue to be Decided

Is the Tenant entitled to a monetary award pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The tenancy began on December 18, 2013. Monthly rent was \$525.00, due on the 1st day of every month. The Tenant paid a security deposit in the amount of \$250.00 at the beginning of the tenancy. The tenancy ended on July 31, 2014.

The Tenant testified that he did not give the Landlord permission to retain any of his security deposit at the end of the tenancy. He stated that he left the rental unit clean and undamaged and the end of the tenancy, but the Landlord returned only \$100.00 of his security deposit on August 16, 2014, by cheque, which he has cashed.

The Tenant stated that he provided his forwarding address at the time of the move-out condition inspection. He stated that he also provided his forwarding address in writing on August 3, 2014, by letter. A copy of the letter was provided in evidence.

The Landlord stated that the Tenant's forwarding address is not his residence; rather it is his parents' residence. He testified that the Tenant was present at the move-out condition inspection, but refused to sign the Condition Inspection Report. He stated that there were damages that the Tenant was responsible for. The Landlord agreed that he did not have the Tenant's permission to deduct anything from the security deposit.

Analysis

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep the security deposit.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit. It does not require the forwarding address to be the tenant's residential address.

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.

I accept that the Landlord returned a portion of the security deposit to the Tenant; however, I find that the Landlord did not have a right under the Act to retain any of the Tenant's security deposit. I find that the Landlord did not file an application for dispute resolution against the security deposit, or return the full amount of the security deposit within 15 days of receipt of the Tenant's forwarding address in writing.

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.

Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit, less the amount the Landlord returned ($\$250.00 \times 2 - \$100.00 = \$400.00$).

The Landlord retains the right to file an application for damages under Section 67 of the Act, if he so desires.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$400.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: June 22, 2015

Residential Tenancy Branch

