



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the respondent by mailing, by registered mail to where the respondent resides. :

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the applicant is entitled to an order that the respondent allow access to the rental unit?
- b. Whether the applicant is entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?
- c. Whether the applicant is entitled to a monetary order and if so how much?
- d. Whether the applicant is entitled to an order for the return of his security deposit?
- e. Whether the applicant is entitled to an order for the return of his personal belongings?
- f. Whether the applicant is entitled to an order for a tenant's Order for Possession?
- g. Whether the tenant is entitled to an order for the return of the cost of the filing fee?

Background and Evidence

The respondent advertised for the rental of a room in her suite for rent. The suite has two bedrooms and a den. It involved the sharing of kitchen facilities, bathroom facilities and the living area. The applicant responded to the advertisement indicating that he saw her advertisement looking for "a roommate."

The applicant and respondent signed an agreement in which the applicant agreed to rent a room for \$1190 per month. The agreement described the applicant as the resident. The respondent is described as the Owner. The form of agreement provided by each side is different. The applicant provided a photocopy only. Pages 2 and 3 were not included. That document indicates the tenant signed it on April 30, 2015 and the landlord signed it on 05/30/15. The landlord provided an original copy with blue ink. The original copy provided by the landlord has a number of handwritten additions that are absent from the photocopy provided by the tenant. The landlord's copy indicates the tenant signed it on April 30, 2015 and the landlord signed it on 04/30/15. The applicant gave the landlord a security deposit of \$1190. The tenant moved in on May 15, 2015.

The respondent has been in New York with her husband who is ill from May 10, 2015 to July 31, 2015. However, throughout the entire period her adult son has been living in the rental unit and her clothes and belongings were in the bedroom that she occupied.

The respondent moved back to the rental unit when she returned. A dispute arose between the parties. The applicant was locked out of the rental unit and the respondent effectively terminated the tenancy through methods not permitted under the Residential Tenancy Act. The Application for Dispute Resolution filed by the applicant seeks a monetary order in the sum of \$4750 including reimbursement of the rent for August in the sum of \$1190, the cost of finding alternative accommodation, compensation for additional costs such as food etc., an order for the doubling of the security deposit and an order for the cost of belongings the landlord has wrongfully kept. The applicant has not filed a Monetary Order Worksheet so it is difficult how to determine how this claim is broken down. The landlord states the tenant has caused damage to the rental unit that exceeds \$4000.

The respondent submits that I do not have jurisdiction.

Preliminary Issue - Jurisdiction:

Section 4 of the Residential Tenancy Act provides as follows:

What this Act does not apply to

4 This Act does not apply to

....

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

After carefully considering all of the evidence I determined this is living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation and that I do not have jurisdiction for the following reasons:

- The respondent is the owner of the rental unit. She also produced a letter from her insurance company indicating the coverage was changed from rental condo to owner occupied for the period April 24, 2015 to April 23, 2016.
- While she spent an extended period of time in New York caring for her ill husband I determined the rental unit is her residence. Her adult son occupied the rental unit for the entire period. Her belongings remain in the bedroom that she was occupying throughout the entire period.
- The applicant responded to an advertisement that was looking for a “roommate.”
- There is a dispute between the parties as to the tenancy agreement that is to apply. The applicant provided a photocopy that was missing the middle two pages. The photocopy provided by the applicant indicates the respondent signed it 05/30/15. The owner was out of the country at the end of May. The respondent provided an original copy that included all pages. I determined the respondent copy is the one which governs the relationship between the parties. In both agreements the applicant is described as a resident. The original copy provided by the respondent including the following handwritten addition:
 - The rental room is one of three rooms in this townhouse
 - Utilities are shared
 - No drinking, no smoking, no guest stay over.

- The Resident share the kitchen bathroom, dining room and living room with landlord and another roommate.. The Resident has responsibility to clean after use.
- The evidence of the applicant's two witnesses was helpful in determining what happened when the respondent returned in the middle of August but was not helpful for the determination of jurisdiction.

Conclusion

In conclusion I determined the Residential Tenancy Act does not apply and that I do not have jurisdiction. Accordingly I declined to make a determination in this case.

The parties are not without a remedy. In this situation either party has the right to make a claim in the Provincial Court of British Columbia Small Claims Division.

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: October 16, 2015

Residential Tenancy Branch

