



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Life is a Beach Vacation Rentals Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OLC, MNDC, FF, O

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, for “other”, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on December 24, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenants submitted to the Residential Tenancy Branch on December 18, 2015 were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Act*; however the Landlord did not appear at the hearing.

Preliminary Matter

Before considering the merits of any Application for Dispute Resolution I must first determine whether the Application has jurisdiction under the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

The Tenant stated that:

- the Tenants moved into this rental unit on December 15, 2015;
- the Tenants signed an agreement that authorizes them to occupy the rental unit until June 01, 2015;
- the rental unit is fully furnished;
- the Tenants are living in the rental unit on a full time basis and do not have an alternate residence; and
- the Tenants intend to continue living in the region and, if possible, in this rental unit after June 01, 2015.

The Tenants submitted a copy of an agreement that appears to be signed by one of the Applicants. The Landlord refers to the agreement as a “rental agreement” in several places although the agreement declares that the “Residential Tenancy act of British Columbia shall not be applicable to this contract (sic).

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”. On the basis of the “rental agreement” submitted in evidence, I find that the Landlord and the Tenant entered into a tenancy agreement for this rental unit.

Section 2(1) of the *Act* stipulates that this *Act* applies to tenancy agreements, rental units and other residential property, subject to section 4 of the *Act*.

Section 4 of the *Act* outlines a variety of living accommodations to which the *Act* does not apply, none of which are applicable to this rental unit. I did specifically consider section 4(e) of the *Act*, which stipulates that the *Act* does not apply to living accommodation that is occupied as vacation or travel accommodation. As the undisputed evidence is that the Tenants are occupying this rental unit on a full time basis and that they do not have an alternate permanent residence, I find that section 4(e) of the *Act* is not applicable to these circumstances.

As the rental unit is not excluded from the *Act* pursuant to section 4 of the *Act*, I find that the *Act* applies to this tenancy agreement, pursuant to section 2(1) of the *Act*.

Section 5(1) of the *Act* stipulates that landlords and tenants may not avoid or contract out of the *Act*. I therefore find that the *Act* applies to this tenancy agreement in spite of the declaration in the rental agreement that declares the *Act* shall not be applicable to the agreement.

Issue(s) to be Decided:

Is the Tenant entitled to a refund of money paid to the Landlord?

Background and Evidence:

The Tenant stated that:

- the Tenants agree to pay rent of \$9,188.10 for 5.5 months;
- prior to agreeing to rent the rental unit the Tenants were not told they would have to pay tax or cleaning fees;
- the Landlord presented the “rental agreement” to the Tenants on the scheduled move-in date of December 01, 2015;
- the Tenants refused to sign the agreement on December 01, 2015 because it referred to charges they had not agreed to;

- the Tenants were not permitted to move into the rental unit on December 01, 2015 as they refused to sign the “rental agreement”;
- the Tenant eventually signed the “rental agreement” because they wanted to move into the rental unit;
- the Tenants were permitted to move into the rental unit on December 15, 2015, after the agreement was signed; and
- the Tenants paid a security deposit of \$500.00 and a pet damage deposit of \$125.00.

The Tenants are seeking to recover, in part, the \$1,486.22 they paid in taxes. The Tenants submitted documentation that indicates taxes of \$1,486.22 was charged.

The Tenants are seeking to recover, in part, the \$95.00 “processing” fee that was paid. The Tenants submitted documentation that indicates the Tenants were charged a “processing” fee, although the Tenant does not know what this payment is actually for.

The Tenants are seeking to recover, in part, the \$1,201.75 they paid in cleaning fees. The Tenants submitted documentation that indicates the Tenants were charged one “cleaning fee” of \$373.75 and one “mid-stay clean” fee of \$828.00.

The Tenant stated that his understanding was that the Landlord would clean the rental unit once every two weeks, although to date the rental unit has only been cleaned on February 01, 2015. The Tenant stated that the Tenants do not want to have the rental unit cleaned by the Landlord and that they only agreed to the cleaning fees because the Landlord would not let them move into the rental unit unless they signed the “rental agreement”.

The Tenants are seeking to recover, in part, the \$125.00 pet deposit that was paid. The Tenants submitted documentation that indicates the Tenants were charged a “pets” fee of \$125.00.

Analysis:

Section 7 of the *Act* outlines all of the non-refundable fees a landlord is entitled to collect, which does not include sales tax or fees for processing tenancy applications/agreements.

On the basis of the undisputed evidence I find that the Tenants paid \$1,486.22 in taxes. As section 7 of the *Act* does not authorize a landlord to collect tax for rent, I find that this payment must be refunded to the Tenants.

On the basis of the undisputed evidence I find that the Tenants paid a “processing” fee of \$95.00. As section 7 of the *Act* does not authorize a landlord to collect processing fees, I find that this payment must be refunded to the Tenants.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary, I find that the Tenant agreed to pay \$1,201.75 to the Landlord in exchange for having the rental unit cleaned every second week. I calculate this to be twelve cleanings between December 15, 2015 and June 01, 2016, which equates to \$100.15 per cleaning.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary, I find that the rental unit has only been cleaned by the Landlord on one occasion since the start of the tenancy. As the Tenant appears to have agreed to pay \$100.15 for each cleaning; the rental unit has been cleaned on at least one occasion; and I do not have authority to set aside any verbal employment contract the parties may have entered into, I find that I cannot order the Landlord to return the \$100.15 that was paid for the one time the unit was cleaned.

Section 6(3)(b) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if it is unconscionable. On the basis of the Tenant's testimony that he only agreed to the cleaning terms in the "rental agreement" because he was told it was required, I find that this term of the tenancy agreement is grossly unfair to the Tenant and is, therefore unenforceable.

As the Tenant has declared that he does not want the cleaning service and this term of the agreement is not enforceable, I find that the Landlord is not obligated to provide cleaning services and the Tenant has the right to decline any further offers to clean the unit.

As the term regarding cleaning is unenforceable I find that the Landlord must return the \$1,201.75 paid for cleaning, less the \$100.15 payment for the cleaning service that has already been provided, which is \$1,101.60. The Landlord and the Tenant retain the right to enter into a separate agreement for cleaning; however that agreement must be entirely separate from their tenancy agreement.

Section 18(1) of the *Act* authorizes landlords to collect a pet damage deposit when a tenant wishes to have a pet in the rental unit. I therefore find that the Landlord had the right to collect a pet damage deposit of \$125.00 and I dismiss the Tenants' application to recover this fee, with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution seeking to recover this deposit if it is not properly retained/returned at the end of the tenancy.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$2,732.82, which is comprised of a tax refund of \$1,486.22, a cleaning refund of \$1,101.60, a processing fee refund of \$95.00, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution,

and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province 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: February 09, 2016

Residential Tenancy Branch

