Dispute Resolution Services

DECISION

Dispute Codes   CNC, DRI FF, LAT, LRE, MNSD, OLC, OPT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:
  a. An order to cancel the one month Notice to End Tenancy
  b. An order disputing a rent increase that does not comply with an increase permitted by the Regulations
  c. An order authorizing the Tenants to change the locks
  d. An order suspending or setting conditions on the landlord's right to enter the rental unit.
  e. An order for the return of the security deposit or pet damage deposit.
  f. An order that the landlord comply with the Act, regulations and/or the tenancy agreement.
  g. A tenant's order of possession.
  h. An order to recover the cost of the filing fee.

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.

I find that the one month Notice to End Tenancy was served on the Tenants. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on May 8, 2017. With respect to each of the applicants' claims I find as follows:

Preliminary Matter:
The Respondent takes the position that the Applicants are house sitters, the Residential Tenancy Act does not apply and that there is no jurisdiction to consider this dispute.

The Respondent rents the rental unit from an owner. The Respondent and BA originally signed a Residential Tenancy agreement dated July 29, 2016 that provided the tenancy would commence on September 1, 2016, end on August 30, 2017 and the tenants would vacate at that time. The landlord of the Respondent refused to agree to this sublet. The Respondent testified they voided the tenancy agreement and entered into a house setting agreement dated August 28, 2016. The Applicants vacated the rental unit on May 13, 2017 and have not

provided a forwarding address. The Respondent was not able to serve the Applicants with her evidence. The Applicants testified they have not seen the house sitting agreement. However, they submit the Residential Tenancy Act applies.

The housesitting agreement includes the following:

- "The home gives the house sitter permission to occupy the above premises as long as they abide by the conditions of this agreement."
- "This is not a lease. Both parties agree that the house sitter only has a license to occupy the premise according to the terms and conditions of this agreement and has no legal interest in the premises."

Analysis:

Section 1 of the Residential Tenancy Act provides 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; (my emphasis)**

> **What this Act applies to**

> **2** (1) Despite any other enactment but subject to section 4 *[what this Act does not apply to]*, this Act applies to tenancy agreements, rental units and other residential property.

> (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

> **This Act cannot be avoided**

> **5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 91 of the Act provides "Except as modified or varied under this Act, the common law respecting landlord and tenants applies in British Columbia.

At common law a licence to occupy land amounts to a permission to occupy land without which the person's occupy would be unlawful. It is distinguished from a tenancy on the basis that a tenancy creates an interest in the land by way of a grant of exclusive possession, whereas a licence does not create an interest in land.

I determine the Residential Tenancy Act applies in this situation for the following reasons:

- Section 2 provides that the Act applies to tenancy agreements, rental units, and other residential property.
- The definition section of the Residential Tenancy Act defines "tenancy agreement" as including to a licence to occupy.
- While the landlord has attempted to exclude the Residential Tenancy Act through the use of a house sitting agreement, section 5 provides that the parties may not avoid or contract out of the Act.
- The occupation of the rental unit is consistent with a residential tenancy agreement.

As a result I determined that I have jurisdiction to hear and determine this dispute.
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Issue(s) to be Decided

The issues to be decided are as follows:
   a. Whether the tenants are entitled to an order to cancel the one month Notice to End Tenancy?
   b. Whether the tenants are entitled to an order disputing a rent increase that does not comply with an increase permitted by the Regulations
   c. Whether the tenants are entitled to an order authorizing the Tenants to change the locks
   d. Whether the tenants are entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
   e. Whether the tenants are entitled to an order for the return of the security deposit or pet damage deposit.
   f. Whether the tenants are entitled to an order that the landlord comply with the Act, regulations and/or the tenancy agreement.
   g. Whether the tenants are entitled to a tenant's order of possession.
   h. Whether the tenants are entitled to an order to recover the cost of the filing fee.
   i. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2016 when the parties entered into a fixed term agreement. The rent was $1525 per month. It was subsequently increased to $1575. The tenants paid a security deposit of $762.50 and a pet damage deposit of $762.50 prior to the start of the tenancy. The tenants vacated the rental unit as of May 13, 2017. The rent was paid for all of May.

Analysis:
The parties agreed that as the tenants have vacated the rental unit and they have no desire to reinstate the tenancy that the claims in issue a, c, d, f, g, are moot and no longer relevant. Those claims are dispute without leave to re-apply.

The Applicants sought an order for the return of their security deposit and pet damage deposit.

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The Applicants failed to provide the Respondent with their forwarding address in writing.
As a result the claim for the return of the security deposit and pet damage deposit is dismissed with leave to re-apply. I also dismissed the tenants' claim disputing a rent increase that does not comply with the Regulations with leave to re-apply as the parties did not address that issue in the hearing.

I dismissed the Applicants' claim to recover the cost of the filing fee as the Tenants have not been successful.

This decision is final and binding on the parties.

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 13, 2017

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Residential Tenancy Branch