



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed July 21, 2017, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$7,460.00.

The hearing was conducted by teleconference on January 15, 2018 and March 8, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord representing rent paid for a period of time in which the Tenant was denied access to the rental unit?
2. Is the Tenant entitled to return of the security deposit paid?

3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant was an English language learner and as such her advocate, T.M., testified on her behalf. T.M. stated that the tenancy began April 10, 2017 for a fully furnished rental unit in an apartment building. The parties did not enter into a written tenancy agreement although the Tenant paid a \$200.00 security deposit and the parties agreed the tenancy would end August 31, 2017.

T.M. further stated that monthly rent “varied” depending on what the Landlord wanted to charge and the season; namely, the Tenant paid the sum \$2,600.00 for the time period April 10, 2017 to May 9, 2017; and, \$10,893.00 for the time period May 10, 2017 to August 31, 2017; such that the Tenant paid a total of \$13,493.00 in rent.

The Tenant’s agent confirmed that the Tenant was to move out of the rental unit on August 31, 2017, but the Landlord changed the locks on the rental unit on July 2, 2017 such that the Tenant was denied entry. On July 1, 2017 the Tenant went on an overnight trip and packed all of her belongings and when she returned the locks were changed.

The Tenant did not understand the law of residential tenancies or her right to claim for access to the rental unit. She called the police and they advised her to call a locksmith to change the lock. She hired a locksmith, but as it was late and they were making a lot of noise, she had to leave.

The Tenant sought the sum of \$7,460.00 which includes return of the amounts paid in rent for the days from July 1, 2017 to August 31, 2017, return of her security deposit and an amount for pain and suffering.

T.M. also stated that the Landlord and Tenant had discussions about subletting the rental unit for the remaining months July to August 31, 2017. On June 27, 2017 the Landlord represented to the Tenant (through text messages) that an individual was interested in renting the unit from July 10, 2017. The Tenant agreed, provided that she was refunded for the remaining days from July 10, 2017 to August 31, 2017.

The parties never came to an agreement, but the Landlord told the Tenant that the individual had already paid and wanted to move in as soon as possible. That evening the Landlord and the Tenant negotiated further. The Tenant stated that if she received

\$3,500.00 she would move out, and if the Landlord did not agree she would stay until August 31, 2017. The parties did not reach an agreement. On July 1, 2017 the Tenant went on an overnight trip. The Landlord was aware of this trip. When the Tenant returned the locks had been changed.

T.M. further stated that she did not have any knowledge of whether someone else moved in before August 31, 2017.

In response to the Tenant's claims, the Landlord's daughter testified as follows. She stated that although she advertises the rental property as a vacation rental on AirBnB, Expedia, etc. this Tenant did not find the rental through these sites, as the Tenant is a friend of the Landlord's daughter.

The Landlord's daughter stated that the Tenant moved into the rental unit June 18, 2017, not April as stated by the Tenant's agent. The Landlord's daughter said the Tenant came to Canada April 10, 2017 and at that time she came and stayed with the Landlord's daughter in another property.

The Tenant then moved into the subject rental unit on June 18, 2017 with the agreement that she would stay until August 31, 2017 and pay monthly rent of \$2,950.00.

The Landlord's daughter confirmed the Tenant paid a \$200.00 deposit in addition to \$7,670.00 in rent for her time in the rental unit including:

- \$2,950.00 for June 18, 2017 to July 17, 2017;
- \$2,950.00 for July 18, 2017 to August 17, 2017;
- \$1,700.00 for August 18, 2017 to August 31, 2017.
- For a total payment of **\$7,600.00.**

The Landlord's daughter confirmed that the rental unit was a furnished short term rental and even though the amounts paid were "non-refundable" she returned \$3,500.00 to the Tenant at the end of June 2017 when the Tenant informed the Landlord that she had found another apartment. She further claimed this was done because the Tenant was a friend of the Landlord's daughter's friend, and they wished to be reasonable. She stated that she received the rent payments in cash and paid back cash such that she had no proof of this payment.

The Landlord's daughter stated that she retained the \$200.00 deposit as she claimed the Tenant failed to return the key to the rental unit.

In reply to the Landlord's submissions, Y.W., the advocate/articled student who assisted the Tenant on the second day of hearing, stated that the Landlord did not return \$3,500.00. In support Y.W. drew my attention to a text message which was written in Mandarin. She confirmed that she speaks and reads Mandarin and that the message on page 43 of the Tenant's documents is accurately translated on page 44 of the Tenant's documents. In this message the Tenant writes that she was supposed to receive \$3,500.00 and the tenancy would end. Y.W. noted that the message indicates it was sent on July 4, 2017, after the date the Landlord claims to have returned the funds.

Y.W. confirmed that the Tenant did not reside in the rental unit from July 1, 2017 to August 31, 2017 and that the Tenant paid \$2,950.00 per month for rent.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

I find that the Tenant paid rent of \$2,950.00 per month for the subject rental unit. I further find that despite paying for the time period July 1, 2017 to August 31, 2017, the Tenant was denied access to the rental unit.

I find this rental unit is not vacation accommodation as provided for in section 4 of the *Act*. The Landlord's daughter conceded that although the property has been rented as a vacation rental in the past, she rented the unit to the Tenant for a fixed term. I find this to be similar to the following example provided in the *Residential Tenancy Branch Policy Guideline 27—Jurisdiction* as the rental unit was not rented on a vacation or travel basis:

iii. Vacation Accommodation

The *Residential Tenancy Act*⁴ provides that the Act does not apply to vacation or travel accommodation. However, the Act would apply to summer cottages and winter chalets that are rented other than on a vacation or travel basis. For example, a winter chalet rented for a fixed term of one year is not rented on a vacation basis.

Although the parties discussed a possible sublet, there was insufficient evidence before me to support a finding that an agreement was reached in this regard. Although not

strenuously argued, I also do not accept the Landlord's submission that the Tenant abandoned the rental unit.

A tenancy must be ended in accordance with section 44 of the *Act*, and a Landlord may not regain possession of a rental unit until a tenancy ends. For clarity I reproduce that section as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms

Based on the evidence before me, I find that the Tenant had the right to exclusive possession of the rental unit until August 31, 2017. The Tenant's right to exclusive possession is protected pursuant to section 28 of the *Act* which reads as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find the Landlord breached sections 28 and 44 of the *Act* by denying the Tenant access to the rental unit.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I find the Tenant is entitled to monetary compensation from the Landlord including return of the rent paid for July and August 2017 in the total amount of **\$5,900.00**.

I also find the Tenant is entitled to return of her security deposit in the amount of **\$200.00**.

Although the Landlord acted in a high handed manner by denying the Tenant access to the rental unit, the evidence before me was that the Tenant had taken her belongings with her when she went on a holiday at the end of June 2017. While this was no doubt distressing for her, I find she has failed to provide sufficient evidence to support a claim for additional compensation for pain and suffering; as such that portion of her claim is dismissed.

As the Tenant has been substantially successful in her application I also award her recovery of the **\$100.00** filing fee for a total award of **\$6,200.00**.

I do not accept the Landlord's evidence that they returned the sum of \$3,500.00 to the Tenant. The Landlord did not provide any receipts of documentary evidence to support their claim that these funds were returned. Further, the documentary evidence submitted by the Tenant confirms that as of July 4, 2017 she continued to ask for return of these funds, and as such I find it more likely that she did not receive them.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of **\$6,200.00**. The Tenant must serve the Order on the Landlord and may file and enforce it in the B.C. Provincial Court (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: March 23, 2018

Residential Tenancy Branch