Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the return of the security deposit - Section 38
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the agreement under the jurisdiction of the Act?
Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: On December 28, 2017 the Tenants signed an agreement entitled "Travel Accommodation Tenancy Agreement" with a "tenancy" start date of January 1, 2018 on a fixed term to end June 30, 2018. The Landlord collected a security deposit of $1,100.00 and a parking deposit of $80.00. The parking deposit is set out on a separate parking agreement. Rent of $2,200.00 was payable on the first day of each month. No move-in condition inspection was conducted. On January 3, 2018 the Tenant returned the keys to the unit and gave the

Landlord a letter indicating that the Tenant was not going to occupy the unit. The letter sets out the Tenant's reasons for not occupying the unit, provides the Tenant's address and includes a request for the return of the deposits. The Landlord has not returned the security deposit or made a claim against the security deposit.

The Landlord states that the agreement is not under the jurisdiction of the Act as it indicates that it is for travel accommodation. The Landlord states that the unit is travel accommodation as it is furnished and is for a fixed term. The Tenant states that the unit is a condo in a high-rise building. The Tenant states that upon signing the agreement the Landlord informed the Tenants that although the tenancy agreement was for a fixed term the Parties would discuss an extension before the term was over. The Tenant confirms that the tenancy agreement and addendum provides that the Tenants are responsible for their own hydro usage and that the strata rules apply to the tenancy. The Tenant states that he continues to live in a nearby city.

The Tenant states that since the unit was not ready to occupy the Tenants had to pay for alternate accommodation. The Tenant claims $150.00 for January 1 and 2, 2018 and provides an invoice for this amount.

The Tenant states that after discovering that the unit was not ready for occupancy the Tenant was prepared to give the Landlord some time to remedy the unit but that nothing had been done by January 3, 2018 and the Landlord would not respond to the Tenant's enquiries. The Tenant provides a copy of text communications dated January 1, 2018 between the Tenant and the Landlord in relation to the unit not being ready for occupancy on that date. The Tenant states that the keys were then returned on January 3, 2018 with the letter setting out the reasons. The Tenant does not waive any entitlement to return of double the security deposit that may result from this claim.

The Landlord disputes the Tenant's claims and states that the unit was ready on January 1, 2018 and that the Tenant did not pay any rent. The Landlord states that no

application was made to claim against the security deposit as it was the Landlord's position that the Act did not apply. The Landlord states that they retained the Tenant's security deposit as payment for liquidated damages. The Landlord points to paragraph F7 on the addendum as the provision for liquidated damages. It is noted that no amount is set out as liquidated damages in that paragraph and that the provision only states that liquidated damages may be applicable.

Analysis

Section 2 of the Act provides that the Act applies to tenancy agreements, rental units and other residential property. Section 4 of the Act provides that the Act does not apply to living accommodation occupied as vacation or travel accommodation. Policy Guideline #27 provides that if accommodation is rented under a tenancy agreement, for example, a winter chalet rented for a period of six months, the Act applies. The simple labelling of an agreement does not indicate that the Act does not apply. Given that the Parties signed a tenancy agreement, that the unit is not located in a hotel or similar business but is located in a condominium building, that the Landlord collected a security and parking deposit, that the Tenant was to be responsible for its own hydro, and that the Parties discussed a possible further occupation after the end of the fixed term, I find that the unit is not vacation or travel accommodation and that the Act applies.

Section 1 of the Act provides that "security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. I note that the parking agreement indicates parking at a nearby but different address than the rental unit. While it can be accepted that the parking spot was agreed to for the purposes of the tenancy, no evidence was provided on whether the parking address was part of the residential property of the rental unit. As a result I cannot find that the $80.00 formed part of the security deposit.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord received the Tenant's address on the same date as the Tenant ended the tenancy in a letter dated January 3, 2018, I find that the Landlord had 15 days from January 3, 2018 to deal with the security deposit. As the Landlord neither returned the security deposit or made an application claiming against the security deposit I find that the Landlord must now repay double the security deposit plus zero interest of **$2,200.00**.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Although the Landlord's evidence is that the unit was ready for occupancy on January 1, 2018 I found the Tenant's evidence that it was not ready to be highly persuasive as it held a ring of truth and was supported by the text communication between the Tenant and the Landlord on January 1, 2018. I therefore prefer the Tenant's evidence and find that the Landlord breached the Tenant's right of occupancy to the unit on January 1, 2018 and caused the Tenant to incur the unexpected living expenses claimed for January 1 and 2, 2018. Given the invoice showing that the costs claimed were incurred, I find that the Tenant is entitled to the claimed amount of **$150.00**.

Given that the parking agreement was signed on the same date as the tenancy agreement and considering the Tenant's undisputed evidence that the lack of a parking spot was one of the reasons for ending the tenancy, I find that the parking agreement was made for the purposes of the tenancy and therefore forms part of the tenancy arrangement with the Landlord. Based on the undisputed evidence that the Landlord

collected $80.00 as a security deposit for parking and failed to provide a parking spot as of January 1, 2018 I find that the Landlord must return the deposit. The Tenant is therefore entitled to **$80.00**.

As the Tenant has been successful with its claims I find that the Tenant is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$2,530.00**. The Landlord remains at liberty to pursue any claims it may have against the Tenant by making an application for dispute resolution.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$2,530.00**. If necessary, this order may be filed in the 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: August 29, 2018

Residential Tenancy Branch