



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAKE OKANAGAN RESORT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was scheduled to deal with a tenant's application for return of double the security deposit. The applicant appeared along with a support person; however, there was no appearance on part of the respondent. Since the respondent was not in attendance, I proceeded to explore service of hearing documents. The applicant testified that the hearing documents were sent to the respondent by registered mail on March 26, 2018. The applicant provided the registered mail tracking number as proof of service which I have recorded on the cover page of this decision. A search of the tracking number showed that the resisted mail was successfully delivered on March 28, 2018. I was satisfied the respondent was duly notified of this proceeding and I continued to hear from the applicant with the respondent present.

Preliminary matter – Jurisdiction

I was not provided a written tenancy agreement for this dispute and the name of the respondent appears consistent with that of a vacation resort property. The applicant stated that the property is a hotel or motel that also rents rooms on a month to month basis during the off-season.

As provided under section 2 of the *Residential Tenancy Act* (referred to as "the Act" or the RTA), the Act applies to tenancy agreements, rental units and residential property. Section 1 of the Act defines a tenancy agreement to mean an agreement 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 added].

Section 4 of the Act specifically excludes certain living accommodation from application of the Act, including: "living accommodation occupied as vacation or travel accommodation".

Residential Tenancy Policy Guideline 27: *Jurisdiction* provides the following policy statements and information, in part, with respect to accommodation in vacation, travel or hotel rooms:

Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- Whether the agreement to rent the accommodation is for a term;
- Whether the occupant has exclusive possession of the hotel room;
- Whether the hotel room is the primary and permanent residence of the occupant.
- The length of occupancy.

Even if a hotel room is operated pursuant to the *Hotel Keeper's Act*, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be oral.

The tenant testified that she had to move out of her former living accommodation by the end of December 2017. Due to the very low vacancy rate in her area she explored the option of renting a room in a motel. She contacted the landlord and determined that they rented rooms on a monthly basis during the off-season. She met with the manager and it was agreed that the tenant would rent a room for \$1,100.00 per month starting January 1, 2018 and pay a security deposit of \$500.00 by way of two installments of \$250.00. The manager completed a Shelter Information document which was given to Income Assistance so that the tenant may obtain shelter funds. According to the tenant, Income Assistance wrote a cheque for the monthly rent of \$1,100.00 which the tenant gave to the landlord. The tenant took possession of the rental unit on January 1, 2018 as her primary residence. On January 12, 2018 the tenant gave \$250.00 toward the security deposit to the landlord and intended to give the landlord the second half of the security deposit with her subsequent disability cheque. However, the landlord kicked the tenant out of the room in the third week of January 2018 so the tenant did not pay the other half of the security deposit.

Based on the unopposed submissions before me, I find I am satisfied that the tenant and the respondent entered into an agreement for the purpose of providing the tenant with a primary residence, not vacation or travel accommodation, on a month-to-month tenancy starting on January 1, 2018. Accordingly, I find both parties were obligated to comply with the *Residential Tenancy Act* and I proceed to consider whether the tenant is entitled to return of double the security deposit that was paid.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started on January 1, 2018 and the tenant was required to pay rent of \$1,100.00 per month. The tenant paid a security deposit of \$250.00 by way of a debit to her bank account by the landlord on January 12, 2018. The tenant provided a print out of her bank statement showing the \$250.00 debit in the name of the landlord on January 12, 2018.

The tenant testified that in the third week of January 2018 the landlord kicked the tenant and her family members out of the rental unit. The landlord refunded the rent the tenant had paid for the remainder of the month but refused to refund the security deposit to the tenant.

On February 22, 2018 the tenant sent a written forwarding address to the landlord via registered mail but the registered mail was refused by the landlord. The tenant provided a copy of the registered mail receipt and envelope, including the tracking number, as proof registered mail was sent to the landlord on February 22, 2018 and refused. The tenant also provided a copy of the letter that was enclosed in the envelope that contained her forwarding address.

The tenant testified that she inspected the rental unit with the landlord after she removed her belongings, that she did not authorize the landlord to retain her deposit and the landlord has not refunded the security deposit to her.

Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, I find the tenancy ended in January 2018 when the tenant returned possession of the rental unit to the landlord; and, I accept that the tenant did not authorize the landlord to retain her deposit in writing or otherwise extinguish her right to its return.

The tenant provided evidence to demonstrate she sent her written forwarding address to the landlord via registered mail on February 22, 2018. Although the landlord refused to accept the registered mail, section 90 of the Act deems a party to be in receipt of mail five days after mailing, even if the party refuses to accept or pick up their mail, so that a party cannot benefit from avoiding service. Therefore, I find the landlord is deemed to have received the tenant's written forwarding address on February 27, 2018.

Having deemed the landlord to be in receipt of the tenant's written forwarding address on February 27, 2018 I find the landlord had 15 days from that date, or March 14, 2018, to either refund the security deposit to the tenant, file an Application to make a claim against it, or obtain the tenant's written consent to retain it. Since the landlord did none of these things, I find the landlord must now pay the tenant double the security deposit, or \$500.00.

In light of the above, I grant the tenant's request for a Monetary Order in the sum of \$500.00 to serve and enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary Order in the sum of \$500.00 to serve and enforce upon the landlord.

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, 2018

Residential Tenancy Branch