



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Although the landlord attended the hearing and was generally aware of what the tenant had applied for, the landlord gave undisputed sworn testimony that the tenant had not provided the landlord with a copy of the tenant's dispute resolution hearing package or Application for Dispute Resolution. The landlord obtained information on how to connect with this hearing from the Residential Tenancy Branch (the RTB) and obtained basic details of the tenant's application for the RTB. The tenant confirmed that they had not provided the landlord with a copy of these documents. Although the tenant did not serve documents in accordance with section 89 of the *Act*, and with the agreement of the parties, I proceeded to hear this application, as I am satisfied that the landlord was sufficiently aware of the tenant's application such that there would be no lack of natural justice were we to proceed. I make this determination pursuant to section 71 of the *Act*.

Since the tenant confirmed that they had received copies of the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*. The tenant did not supply written evidence.

Issues(s) to be Decided

Does this matter fall within the jurisdiction of the *Act*? If so, should any orders be issued with respect to any tenancy that does exist? Is the tenant entitled to recover the filing fee for this application from the landlord?

Preliminary Issue - Jurisdiction

In the landlord's written evidence, the landlord maintained that as they reside in this rental home and share kitchen and bathroom facilities with the tenant and the other occupants of this rental property that this tenancy does not fall within the jurisdiction of the *Act*.

In this regard, I note that section 4(c) of the *Act* reads in part as follows:

- 4 *This Act does not apply to...*
 (c) *living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...*

The landlord gave undisputed sworn testimony that he owns this building. The landlord testified that as of three months ago, he changed his principal residence from another shared accommodation elsewhere in his community to one of the rooms in the building where the tenant resides. The landlord said that he resides in this building on Wednesdays, and on weekends, when he returns from training in a facility in Alberta.

The tenant testified that they have never seen the landlord residing in the rental unit. The tenant said that someone else lived in the room where the landlord was claiming to be residing until about four months ago. Since then, the tenant said that they have never seen anyone enter or exit the bedroom where the landlord claims to be living, which is across the hall from the tenant. The tenant testified that another resident in the rental property was approached by the landlord recently with a request that he provide information, likely for this hearing, that the landlord resides in the rental home.

Although the landlord provided copies of various utility bills as written evidence, the landlord confirmed that these bills came to him as the owner of this shared dwelling as he pays these utilities. The landlord said that he has not changed his official address on his driver's licence yet. The landlord said that he expects to be continuing the training program he has been attending until November 2019, or earlier if the training is completed more quickly than anticipated.

Based on a balance of probabilities, I find that the landlord has supplied insufficient evidence to confirm his assertion that he resides in this rental home. As such, I find that the tenancy agreement between the parties falls within the jurisdiction of the *Act* as this is not a tenancy that is excluded from consideration by an Arbitrator by section 4(c) of the *Act*.

Background and Evidence

This month-to-month tenancy for a room in a rental home commenced on July 1, 2018. The tenant shares common areas with other residents there, including the washroom and kitchen. Monthly rent is set at \$500.00, payable in advance on the first of each month. According to the terms of their Residential Tenancy Agreement entered into written evidence, the landlord continues to hold the tenant's \$250.00 security deposit paid when this tenancy began.

The tenant applied for dispute resolution because they were concerned that the landlord appeared to be trying to rent the whole four bedroom house to other tenants. The tenant maintained that no proper notice to end tenancy had been provided to the tenant. The landlord had, however, provided him with a handwritten notice on May 4, 2019, to end this tenancy by June 4, 2019.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on September 30, 2019, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement by 1:00 p.m. on September 30, 2019. The landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 21, 2019

Residential Tenancy Branch