



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rayn Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSDT, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 7, 2019 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The tenant testified that he received an email from Canada Post confirming that the registered mail was deliver, however the tenant could not recall the exact date he received that email.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing I confirmed with the tenant that he had misspelled the name of the landlord and the street name for the dispute address. I have amended his Application for Dispute Resolution to correct these spelling errors – the correct landlord name and street name appear on the first page of this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation; for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted a document into evidence entitled “Motel/Hotel Rental Agreement for Temporary Rental”. This document is signed by an agent for the landlord. The document stipulates that the rent for the property is subject to the regulations of the *BC Hotel/Motel Act*.

The agreement stipulates that rent is on a “day-to-day” basis, for \$60 per day payable one month in advance on or before the first of each month or \$1,800.00. The agreement required the payment of security deposit in the amount of \$900.00 and that the tenant be responsible for all services to the property. The agreement allowed for the landlord to end the tenancy by giving the tenant 60 days written notice.

The tenant testified that despite the above noted agreement he paid rent on the 1st and 15th of each month with equal payments of \$900.00. The tenant submitted that he moved into the rental unit, a three-bedroom house, on February 1, 2019 and that he moved out on March 30, 2019. The tenant submitted this was his primary residence.

The tenant testified that during the entire tenancy the heating system did not work and that he was advised by the landlord that the tenant would have to heat the place by space heaters and that it was up to the tenant to provide his own heat source. The tenant seeks compensation in the amount of \$2,700.00 which equals the amount of rent paid over the course of the tenancy for the landlord’s failure to provide heating.

The tenant submitted that he provided his forwarding address to the landlord on March 20, 2019 – the day he vacated the rental unit and that the landlord has failed to return his security deposit.

Analysis

As a result of the wording of the tenancy agreement I find it necessary to assess whether or not I have jurisdiction on the matters raised in this Application for Dispute Resolution. I note that the agreement submitted makes reference to the “*BC Hotel/Motel Act*”, however there is no such statute in the province of British Columbia.

Residential Tenancy Policy Guideline 27 provides the following guidance:

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.

In consideration of the submissions by the tenant that the accommodation provided was a three-bedroom house that he used as his primary residence and that he had exclusive possession of the rental unit on a month to month basis, I find that these factors imply a residential tenancy rather than a hotel or vacation accommodation.

Despite the wording in the tenancy agreement that indicates the tenancy is governed by the "*BC Hotel/Motel Act*" the only relevant act in the province of BC would be the *Hotel Keeper's Act*. I note the *Hotel Keeper's Act* defines an "inn" as:

"a hotel, motel, auto court, inn, tavern, public house or other place of refreshment, the keeper of which is by law responsible for the goods and property of the guests"

I find that a three-bedroom home where the tenant was attempting to set up a permanent primary residence with a security deposit paid in an amount equivalent to one half of the total monthly rent of \$1,800.00 is indicative of a tenancy.

I also note that despite the wording in the tenancy agreement that rent was on a per day basis at \$60.00 per day accepting rent in the amount of \$1,800.00 for the month of February 2019, which only had 28, confirms that rent was paid on a monthly basis and not for a daily use basis.

Furthermore, if the rental was truly rented on a per day basis there would be no need for a provision that would require the landlord to give the tenant 60 days notice to vacate the unit. I also find that it would be unlikely that a person renting accommodation under the *Hotel Keeper's Act* would be required to pay their own utilities, as required under this agreement.

When considered in its totality, and on a balance of probabilities, I find that the agreement between these two parties establishes a tenancy falling within the jurisdiction of the *Residential Tenancy Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the credible and undisputed testimony provided by the tenant I find the tenancy ended on March 30, 2019 and that the tenant provided his forwarding address on the same date. I accept that the tenant has not received his security deposit back from the landlord and that the landlord has not filed a claim against the tenant seeking to retain the deposit. I find the landlord had until April 14, 2019 to take one of those actions.

As a result, I find the landlord has failed to comply with the requirements set forth under Section 38(1) to return the deposit or file a claim against it within 15 days and as such, I find the tenant is entitled to return of double the amount of the deposit in the amount of \$1,800.00.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the tenant's credible and undisputed testimony and evidence I find, on a balance of probabilities that the landlord not only failed to provide heat in the rental unit during winter months he placed the burden on the tenant to actually provide his own heat source.

I find this is an egregious contravention of the *Act* and when combined by the landlord's deliberate attempt to circumvent the *Act* by saying they were governed by legislation that does not exist warrants a full refund of rent paid for the duration of the tenancy. As such, I am satisfied that the tenant has suffered a loss as a result of the landlord's

actions; that these actions contravene the *Act*, and the tenant has established the value of that loss.

Therefore, I find the tenant is entitled to compensation in the amount of \$2,700.00 as claimed.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,600.00** comprised of \$2,700.00 compensation owed; \$1,800.00 double the security deposit and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: July 12, 2019

Residential Tenancy Branch