



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenant applies for a monetary award to recover a \$600.00 security deposit and \$600.00 of rent.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only evidence that had been traded between the parties was accepted during the hearing.

The landlord's defence is that relationship between the parties is not governed by the *Residential Tenancy Act* (the "RTA"). He also claims he had just cause to end the tenancy immediately. Further, he says the tenant was not old enough to enter into a contract at the start of the tenancy and so the written tenancy agreement between them is unenforceable.

Issue(s) to be Decided

Does the *RTA* apply to this relationship? If so, is the tenant entitled to recover his security deposit or have it doubled pursuant to s.38 of the *RTA*? Is the tenant entitled to recover rent he had paid? Is the tenancy agreement enforceable though the tenant was not of the age of majority at the time?

Background and Evidence

The rental unit is a six bedroom house. The landlord and his family live in the upper part of the house. There are three bedrooms a kitchen, a bathroom and laundry facilities in the lower part. Both upper and lower parts have laundry facilities, though the landlord and his family have come down and used the laundry facilities in the lower part on occasion. The lower part has a separate entrance and there is a lockable door to the stairs connecting upper and lower. The landlord rents out the lower bedrooms individually and those tenants share the cooking, laundry and bathroom facilities. Each tenant has a lock on his or her bedroom door.

The tenant is a young foreign student; aged 18 at the time this tenancy was created. There is a written tenancy agreement in the form published by the Residential Tenancy Branch. The tenancy started February 15, 2020. The rent was \$1200.00 per month and the tenant paid a \$600.00 security deposit.

On March 15 the landlord determined that the tenant was not keeping his room clean. He contacted the tenant's legal custodian (according to the landlord, as the tenant was under 19 year of age he required a legal custodian for his visa application). The tenant left that same day.

Analysis

Tenant Under Age of Majority

In BC, the *Age of Majority Act*, RSBC 1996, c.7, determines that a person reaches the age of majority at the age of 19 years. Under the *Infants Act*, RSBC 1996, c.223, Division 3 a contract with an infant (or "minor" – someone under the age of majority) is not enforceable against that infant.

That is not a defence for this landlord for two reasons. First, the *Infants Act* s. 19(2) provides, "a contract that is unenforceable against an infant under subsection (1) is enforceable by an infant against an adult party to the contract to the same extent as if the infant were an adult at the time the contract was made." In this case the "infant" tenant is attempting to enforce his tenancy agreement.

Secondly, s. 3 of the *RTA* clearly states

A person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this Act and the regulations are enforceable by and against the person despite section 19 of the [*Infants Act*](#).

Relationship Not Governed by the *RTA*

The landlord raises a number of significant arguments that his relationship is not subject to the provisions of the *RTA*.

1. Residential Tenancy Policy Guideline 19: Assignment and Sub let

This guideline addresses the legal relationship, or lack of it, between a landlord and any roommate that landlord's tenant might bring in. It does not apply to the circumstances in this case. The relationship between this landlord's landlord and the applicant tenant is not in issue.

2. Residential Tenancy Policy Guideline 17: Rights and Responsibilities of Co-tenants

Again, portion H of this Guideline addresses an occupant's lack of legal relationship with the head landlord and does not apply to the circumstances in this case.

3. The Tenancy is a "Homeshare" Arrangement

An addendum to the tenancy agreement provides that the landlord will provide the tenant with three meals a day. For the month the tenant lived in the rental unit he would eat breakfast and dinner with the landlord's family. The landlord would provide the tenant with a take-away lunch.

There is no formal "homeshare" system or program to which the landlord could point, that might exempt the host/landlord of a foreign/student tenant from the rights and obligations under the *RTA*. The arrangement to feed the tenant is an unusual one. In my view it does not change the landlord and tenant relationship. The provision of meals is a particular service or facility the landlord agreed to provide, as a landlord might offer the service of an internet connection or the use of recreational facilities. Ultimately, the

primary purpose of the tenancy agreement was to provide the tenant with living accommodation.

4. The Tenant Shares Bathroom or Kitchen Facilities With The Landlord

Section 4 of the *RTA* provides that the *RTA* does not apply to “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.” The landlord argues this exemption should be extended to him.

This is not a defense for this landlord. He is not the “owner” of the rental unit and the exemption cannot be stretched to include “landlord” in the definition of “owner.” If the drafters of the legislation intended the exemption to extend to living accommodation in which a tenant shared bathroom or kitchen facilities with the landlord they would have said so.

In any event the tenant has the use of the lower part’s bathroom and kitchen facilities, which he shared with the other tenants in the lower part. The fact that the tenant might also have used the landlord’s kitchen or bathroom on occasion does not change that fact.

For the foregoing reasons I conclude the relationship between the parties is governed by the *RTA*. It should be noted that the tenancy agreement between them is the standard form tenancy agreement provided by the Residential Tenancy Branch and in it the parties specifically agree that their relationship is governed by the *RTA*. The landlord explains that his use of this contract form was an innocent one, but he is taken to know what he has signed.

The Tenant’s Claim

Security Deposit

As this tenancy has ended, and as the landlord does not have the tenant’s written authority nor an arbitrator’s order permitting him to retain the deposit, the tenant is entitled to its return. I award the tenant \$600.00.

Double the Deposit

Under s. 38 of the *RTA*, once a tenancy has ended and once the tenant has provided his landlord with a forwarding address in writing, the landlord then has a fifteen day period in which he must either repay the deposit money or make an application to keep it.

A landlord who fails to either repay the deposit money or make an application within that 15 day period must pay the tenant double the deposit.

The tenant did not provide the landlord with any particular document giving his “forwarding address in writing.” What he as done is bring this application and serve the landlord with a Notice of Dispute Resolution Proceeding on April 6 or 7 and it contains the tenant’s “Address for Service of Documents.”

In my view the address for service of documents in a Notice of Dispute Resolution Proceeding is not the same as the “forwarding address in writing” required by s. 38.

A “forwarding address” is an address for a landlord to send, to “forward” any mail or other communications received after a tenant has moved on. An “address for service of documents” is just that, an address at which the landlord may confidently send documents related to that particular proceeding. It may be the address of an agent or a lawyer, who may not have the authority to accept delivery of their client’s old mail or a cheque for a tenants’ deposit money.

For these reasons I find the tenant has not provided the forwarding address in writing required by s. 38 and that he is not entitled to the doubling of his deposit.

One Half Month’s Rent

The evidence shows that the landlord evicted the tenant suddenly on March 15. It was not a mutual agreement to end the tenancy. Whether or not the landlord had good cause to evict the tenant, he was obliged to follow the Notice provisions of the *RTA* and he did not. The tenant had paid full rent for March and is entitled to recover rent paid for the last half of that month. I award the tenant \$600.00 for this item of the claim.

Conclusion

The tenant is entitled to a monetary award totalling \$1200.00 plus recovery of the \$100.00 filing fee. He will have a monetary order against the landlord in the amount of \$1300.00.

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 11, 2020

Residential Tenancy Branch