Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

On November 12, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 32-minute teleconference. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package by hand to a representative at the Landlord's office on November 20, 2020. He stated that he also emailed this package to the Landlord on this date as well. Based on this undisputed, solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Notice of Hearing package and evidence personally on November 20, 2020. As such, I have also accepted the Tenant's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on April 10, 2020 and that the tenancy ended when he gave up vacant possession of the rental unit on May 31, 2020. Rent was established at $1,500.00 per month and was due on the first day of each month. A security deposit of $750.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He testified that he provided his forwarding address to the Landlord by email prior to June 15, 2020. The Landlord made an Application for Dispute Resolution against the Tenant, on June 15, 2020, using this address (the relevant file number is noted on the first page of this Decision). However, the Landlord withdrew this Application on October 5, 2020, the day before the scheduled hearing.

The Tenant advised that he intended to rent this unit as his primary, full-time, permanent address. He did not rent this unit for travel or vacation accommodation, nor did he move into the rental unit because of a job. This was his only residence and all of his belongings and property were moved there.

He testified that he encountered problems with the Landlord right from the outset of the tenancy. On April 10, 2020 when he was scheduled to move into the rental unit listed on the tenancy agreement, he stated that the Landlord pulled a “bait and switch” as he was informed that the rental unit on the tenancy agreement was no longer available. The Landlord moved him into a basement unit for a few days, but this was not acceptable to the Tenant. He attempted to walk away from the tenancy, but the Landlord threatened not to return the security deposit because it was rented as vacation or travel accommodation. He was offered a different rental unit, and he took occupancy of the unit listed on this Application until the end of the tenancy.

He submitted that in May 2020, he was unable to pay the full rent and he requested that the Landlord use the security deposit to apply towards the outstanding rent. The Landlord declined to do so and threatened that the locks would be immediately changed if the rent was not paid in full. When the Tenant advised that the *Act* prohibits the Landlord from acting in such a manner, the Landlord countered that the *Act* does not apply because this was a vacation or travel accommodation. He stated that he then

borrowed money and paid the rental arrears to the Landlord. Based on the problematic behaviour of the Landlord, he advised that he did not want to remain in the rental unit past the end of the fixed term.

The Tenant stated that he is seeking compensation in the amount of **$887.50**, which is double the amount of the deposit that the Landlord withheld without his authorization. He stated that the Landlord returned $306.25 of his $750.00 security deposit on June 15, 2020. While the Landlord did make an Application to claim against the security deposit, the Landlord withdrew the Application prior to the Dispute Resolution proceeding.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 4 of the *Act* states that the *Act* does not apply to living accommodation occupied as vacation or travel accommodation.

The first and foremost issue I must address in this Application is jurisdiction. While the Landlord did not attend this hearing, I can reasonably infer that it is the Landlord's position that the *Act* did not apply to this tenancy because it was a furnished travel accommodation.

Of note, the tenancy agreement submitted as documentary evidence is titled "Furnished Travel Accommodation Tenancy Agreement" and on page two of this agreement, it states the following:

1. APPLICATION OF THE RESIDENTIAL TENANCY ACT
    1) The Tenant agrees that the rental unit will only be occupied for the sole purpose of being utilized as vacation or travel accommodations. Use for any other purpose is explicitly prohibited. Accordingly, both the landlord and tenant acknowledge that the Residential Tenancy Act of British Columbia does not apply to the terms of this tenancy agreement or any addendums, changes of additions to these terms.
    2) Since the rental unit will only be utilized for vacation or travel accommodations, the landlord and tenant agree that the Residential Tenancy Branch of British

Columbia is the inappropriate organization to settle any disputes arising from this agreement.

3) If the landlord and tenant agree to 1) and 2), then they must both initial the boxes to the right.

The boxes noted above, in point three on the tenancy agreement, were initialed by both parties on the tenancy agreement.

When reviewing the totality of the evidence before me, the undisputed evidence is that despite the Tenant initialling these boxes, he never intended to rent this unit for vacation or travel accommodation. He did not move into the rental unit because he was travelling, on vacation, nor did he move in because he was transferred for a job. This was to be his permanent, full-time residence and he has lived in the same city since this tenancy ended.

Given that the Landlord did not attend the hearing to make any submissions regarding jurisdiction, I find that I prefer the Tenant's evidence on the whole. I find it important to note that there are no provisions in the *Act* which indicate that a short-term rental or a furnished unit would not be covered under the jurisdiction of the *Act*. Moreover, if it was the Landlord's belief that this truly was rented for travel or vacation accommodation and that the *Act* did not have jurisdiction over this tenancy, then it is not clear to me why the Landlord's Application to claim against the security deposit was made in the first place. This would appear, in my view, to be contrary to any position that the *Act* would not apply to this tenancy.

Furthermore, I find it important to note that the undisputed evidence is that the Tenant was not provided the rental unit agreed upon in the tenancy agreement, that he was threatened by the Landlord that the *Act* does not apply to this tenancy, and that the Landlord behaved in any manner they chose to force the Tenant into accepting unfavourable circumstances. In my view, it appears as if the Landlord's use of this short-term tenancy agreement was an attempt to rent a unit falsely, under the guise of travel or vacation accommodation, in an effort to contract blatantly outside of the *Act*. It is apparent that by operating in this manner, this would provide the Landlord the dual benefit of making Applications under the *Act* when it is to their benefit, or simply relying on the façade of the agreement not falling under the jurisdiction of the *Act* when convenient.

Based on the consistent and undisputed evidence before me, I am not satisfied that the Landlord rented this unit for travel or vacation accommodation. Consequently, I find that I have jurisdiction under the *Act* to make a Decision with respect to this tenancy.

Section 38(1) requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposit in full ***or*** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenant's written consent.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant's forwarding address by email prior to June 15, 2020. I am satisfied that the Landlord received this address because an Application for Dispute Resolution was made against the Tenant to claim against the deposit, using this address. Furthermore, the undisputed evidence is that $306.25 was returned to the Tenant on June 15, 2020 and that there was no authorization to withhold any amount of the deposit.

While the Landlord made this Application within 15 days of receiving the Tenant's forwarding address in writing, I am not satisfied that the Landlord complied with the *Act* as the Landlord withdrew the Application prior to the hearing date. As such, I find that the Landlord did not have the authority to withhold the portion of the deposit retained. Therefore, I am satisfied that the Landlord breached the requirements of Section 38, and I find that the doubling provisions of the *Act* do apply in this instance.

Pursuant to Policy Guideline # 17, as the Tenant paid a security deposit of $750.00, and as the Landlord held back $443.75 without the Tenant's written authorization, the monetary award granted shall be calculated as follows: $750.00 X 2 = $1,500.00 – $306.25 = $1,193.75. Under these provisions, I grant the Tenant a Monetary Order in the amount of **$1,193.75**.

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$1,193.75** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should

the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: March 3, 2021

Residential Tenancy Branch