



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on July 18, 2023 concerning an application made by the tenants for a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing and each gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenants indicated that the landlord was served with the Notice of Dispute Resolution Proceeding on December 27, 2022, having received an email from the Residential Tenancy Branch indicating that the tenants could serve the landlord by email. I have read the notes made by Information Officers of the Residential Tenancy Branch, and the proof of service documents, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

The tenants' application was originally made by way of the Direct Request process, which is a process for dispute resolution without an oral hearing. The application was adjourned to this participatory hearing because the tenancy agreement provided as evidence states: "Tenants expressly acknowledge and agree that this Agreement is for transient occupancy of the Property, and that Tenants do not intend to make the property a residence or household."

Although the landlord did not attend the hearing, the landlord provided evidentiary material in advance of the hearing. The tenants were granted leave to provide further evidence respecting jurisdiction after the hearing had concluded.

If the *Residential Tenancy Act* applies, the majority of the landlord's evidence is not relevant because the law requires a landlord to return a security deposit in full to a tenant or make an application for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ended or the date landlord receives the tenant's forwarding address in writing. I have no such application from the landlord.

However, having granted the tenants leave to provide evidence after the hearing had concluded, I find that the landlord's written statement should be considered.

Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to this tenancy?
- If the *Act* applies, have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The first tenant (CB) testified that this tenancy in a short-term rental started on May 1, 2020 and was fixed till July 1, 2020 and the parties agreed to extend it for another 6 months, until January, 2021 at least. The tenants vacated the rental unit on June 1, 2021. Rent in the amount of \$2,200.00 per month was payable on the 1st day of each month and there are no rental arrears. On March 22, 2020 the tenants paid a security deposit to the landlord in the amount of \$1,100.00, which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a condominium apartment, and the landlord did not reside on the property.

The tenants had given notice to end the tenancy on May 8, 2021 effective on June 1, 2021, and paid rent on June 1, 2021.

The tenants sent a Tenant's Notice of Forwarding Address to the landlord by email on May 25, 2022, then again in a text message on June 10, 2021. The landlord had agreed that the tenants could send the forwarding address by email. The tenants left the City on September 1, 2021 and returned to the UK on October 1, 2021. The landlord has not returned any portion of the security deposit to the tenants.

The second tenant (DC) testified that from the tenants' understanding, a fixed term has a pre-determined start and end date, and the tenants had a 6 month lease, which was extended for another 6 months.

Analysis

I refer to Residential Tenancy Policy Guideline #27 – Jurisdiction, which states, in part:

b. 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 the accommodation is rented under a tenancy agreement, the RTA applies. For instance, the RTA would likely apply to a winter chalet rented for a fixed term of 6 months.

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 Keepers Act, the occupant is charged the hotel room tax, or the occupant is charged a daily rate, a tenancy agreement under the RTA may exist. A tenancy agreement may be written or oral.

In this case, the tenants lived in the rental unit for a year, albeit signing an agreement for a short-term rental. The tenants have provided strings of text messages, one of which is from the landlord dated August 4, 2020 stating, "...if you wanted to stay on until early next year, I'd be willing to cancel all our Airbnb stays until next year." Another dated January 19, 2021 states, "Yes we can definitely extend, I'll just have to confirm what's on our schedule I think we have bookings in May onwards I'll confirm more tomorrow." That was in response to the tenant's text message asking if the tenants could extend the least until at least August. Another agrees that the offer to extend till August

The landlord's typewritten statement states that, "I also let the tenants extend their stay at their request as it during the height of COVID and travel was discouraged. They said they could work remotely and although the new timeline wasn't ideal for me I let them stay as long as they wanted, in return they couldn't even give me full notice." Another text message of the landlord dated January 19, 2021 indicates that the landlord filled in the Form K for the tenants as a long-term tenant.

Considering the evidence, and the testimony of the tenant that the tenants remained in the rental unit for a year or more, I find that the *Residential Tenancy Act* applies.

As stated above, a landlord must return a security deposit to a tenant, or make an application to keep it, within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay double the amount of the deposit to the tenant.

In this case, the tenants vacated on June 1, 2021 and provided a forwarding address to the landlord by email on May 25, 2022. The landlord did not return the security deposit and has not made an application to keep it. Therefore, I find that the landlords must reimburse the tenants double the amount, or \$2,200.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$2,300.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,300.00.

This order is final and binding and may be enforced.

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 26, 2023

Residential Tenancy Branch