



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDC, RPP, LRE, FF,
Landlord: MNR, MNSD, FF, O

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The matter was originally set for hearing on March 27, 2014. The matter was adjourned at the request of the tenant to afford him the opportunity to respond to late evidence filed by the landlord. The hearing was rescheduled for June 4, 2014, but for reasons unrelated to the applicants, it was further adjourned until June 18, 2014. The tenant attended the reconvened hearing with his advocate and the landlord called in and participated in the hearing. I also heard from the landlord's witness. Since the tenant's application was filed, the tenancy has ended and the tenant has recovered his belongings. The only matters that remain to be addressed are the tenant's application for a monetary order and the landlord's application for a monetary order. The landlord has, taken the position that this tenancy falls outside the jurisdiction of the Residential Tenancy Branch under the *Residential Tenancy Act*.

Issue(s) to be Decided

Is this tenancy governed by the *Residential Tenancy Act* and if so is the tenant entitled to a monetary award?

If this matter is governed by the *Residential Tenancy Act* is the landlord entitled to a monetary award?

Background and Evidence

The rental property is a house in Vancouver that is owned by the landlord and operated as a rooming house. The landlord produced a copy of a written tenancy agreement prepared on the standard form provided by the Residential Tenancy Branch. According to the agreement, the tenancy began on January 1, 2014 for a two month term. The rent was \$500.00 plus utilities, payable on the 30th day of each month. The agreement provided that: “* tenant may work off \$50 per month for rent- \$10 for HH, supplies”.(sic)

The tenant submitted an application for dispute resolution on February 7, 2014. The application was initially filed to dispute a Notice to End Tenancy for unpaid rent, but the tenant later amended his application to claim damages for what he alleged was his wrongful eviction from the rental unit when the landlord or her agents removed all of his belongings from the rental unit and changed the locks. The tenant claimed the replacement value of his belongings, but by the time the reconvened hearing was conducted, the tenant acknowledged that he has recovered all of his personal belongings and that he is no longer seeking an award for the cost of his possessions.

The tenant is claiming damages for his wrongful eviction and for the return of his security deposit.

The landlord has claimed a monetary award for unpaid rent and utilities, but at the hearing she testified that she is claiming a monetary award only in the event that I find that the *Residential Tenancy Act* applies to this tenancy. Her principal argument is that the Act does not apply to the tenancy because she is the owner of the rental property and she lives in the rental property and shares kitchen and bathroom facilities with the tenants. Her position is that pursuant to section 4 (c) of the *Residential Tenancy Act*, the Act does not apply to this tenancy. The landlord submitted a copy of a state of title certificate showing that she is the registered owner of the rental property and she submitted copies of various bills and invoices addressed to her at the rental address. She testified that the rental property is her principal residence, but she owns other properties and lives part-time in other locations.

The landlord said that the tenant was evicted because he did not pay rent and was disturbing other occupants by smoking tobacco and marijuana in and around the rental property. There was an acrimonious and hostile relationship between the parties. The tenant claimed that he has been abused and taken advantage of by the landlord and the landlord claimed that the tenant has not only disturbed occupants of the rental property and failed to pay rent, but he has defamed her by posting false information about her on the internet.

The tenant disputed the landlord's contention that the Act does not apply to this tenancy; he pointed to the several different addresses she has given on documents concerning the tenancy and on Notices to End Tenancy given to the tenant.

Analysis

In e-mail exchanges introduced as evidence, the landlord referred to a room in the rental property as the room of one of her named tenants and in brackets as (my) room. Considering all of the e-mail communications and the testimony of the parties, I conclude that for the duration of the tenancy the landlord was not living in the rental property and the *Residential Tenancy Act* therefore applies to this tenancy. I am buttressed in this view by the fact that the landlord treated the *Residential Tenancy Act* as applicable to this tenancy; she drew the tenancy agreement using a Residential

Tenancy Branch form and gave the tenant several Notices to End Tenancy using the forms required under the *Residential Tenancy Act*. Finally, the landlord commented in an e-mail that the matter of unpaid rent should be settled pursuant to the *Residential Tenancy Act*.

While the landlord may have had grounds to end the tenancy, she did not have the right to engage in a self help remedy and to evict the tenant without first applying for and obtaining an order for possession. I find that the tenant's unlawful eviction should attract an award of compensation; there was hardship and inconvenience that resulted and in the absence of proof of actual out of pocket losses I award the tenant the sum of \$500.00. According to the tenancy agreement submitted as evidence, the tenant paid a security deposit of \$250.00 on December 31, 2013; he is entitled to the return of the deposit for a total award of \$750.00.

The landlord has claimed unpaid rent for February in the amount of \$300.00. I allow her claim for recovery of February rent and for utilities in the amount of \$59.83. I dismiss the remainder of the landlord's claims without leave to reapply because the claims for additional amounts are unfounded as a consequence of the tenant's wrongful eviction.

Conclusion

Based upon the divided outcome, I do not award a filing fee to either party. The award in favour of the landlord is set off against the amount awarded to the tenant. This leaves a net amount due to the tenant of \$390.17 and I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims 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: July 17, 2014

Residential Tenancy Branch

