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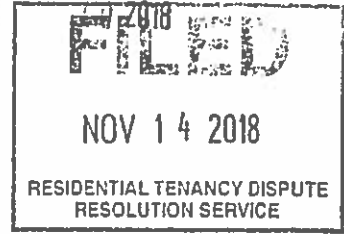
Residential Tenancy Dispute Resolution Service

Unit 112, 10025 - 102A Avenue, Edmonton, Alberta T5J 2Y8

Email: RTDRS@gov.ab.ca

Website: www.service.alberta.ca

Phone: (780) 644-4330



IN THE MATTER OF THE *Residential Tenancies Act*
 Statutes of Alberta, 2004, Chapter R-17.1
 and amendments and regulations thereto

I hereby certify this to be a true copy
 of the original ORDER.
 Dated on Nov 14 2018
 Office Support Clerk

REASONS FOR THE DECISION

RTDRS Case No.: E 18 61084
 Rental Premises: 202, 9248 - 110A Avenue, Edmonton
 Heard on: November 13, 2018

BETWEEN:

GAZI ADAM

APPLICANT/TENANT

- and -

THE CITY OF EDMONTON NON-PROFIT HOUSING CORPORATION

RESPONDENT/LANDLORD

Appearing:

Gazi Adam, Sarah Eadie (legal counsel for the tenant, ECLC)

Darrick Payment (agent for the landlord)

After giving my decision and reasons orally yesterday at the end of hearing this matter, legal counsel for the Tenant asked if I could provide my reasons in writing. I am happy to do so in hopes that it provides clarity for the parties in future similar circumstances.

The only real question for determination in these matters is whether the Tenant is entitled to the return of his security deposit and first rent payment when the tenancy agreement fell apart on the day that he was supposed to move in. For the reasons that follow, I find that he is entitled to the return of all money that was paid to the Landlord.

Findings of Fact

On or about June 6, 2018, the Tenant submitted an application to rent the subject rental premises. With that application, he paid \$25 towards his security deposit of \$500. His application was approved. The balance of the security deposit, \$475, was paid on June 13.

A written tenancy agreement was executed on June 13, 2018. The written agreement states that the tenancy would begin on July 1, 2018. However, the oral agreement between the parties was that the tenancy would begin on June 15. There is no dispute on this point. Therefore, I find that, in spite of what the written agreement says, there was a clear agreement that the tenancy would begin on June 15, 2018.

On June 15, the Tenant attended at the rental premises, but was not allowed to move in for the following reasons:

1. Failure to show proof that utilities had been transferred to the Tenant's name;
2. Failure to show proof that tenant's insurance had been secured;
3. Failure to provide rent for July;
4. Failure to provide \$345 as the prorated amount of rent for June.

Because the Landlord refused to turn over possession of the rental premises on the agreed upon day, the Tenant told the Landlord's agent that he would not be moving in at all and that the deal was off.

On June 20, 2018, a third party Government Agency transferred \$655 to the Landlord for July rent.

Law, Analysis & Decision

Section 16 of the *Residential Tenancies Act, SA 2004, c R-17.1* (the *Act*) provides the legislated covenants a landlord makes to a tenant. Section 16(a) provides the following covenant:

that the premises will be available for occupation by the tenant at the beginning of the tenancy

Section 21 of the *Act* provides the tenant's covenants to the landlords. The legislated covenant relevant to this case is 21(a):

that the rent will be paid when due;

There are other tenant's covenants in the tenancy agreement. In this case, the relevant contractual covenants are (essentially):

that utilities will be transferred into the tenant's name

that the tenant will secure tenant's insurance

Under sections 26 and 37 of the *Act*, the remedies available to both Landlord and Tenant are provided. All of these remedies are available through an application to a court or to the RTDRS. None of these remedies may be applied unilaterally without a court order.

The remedies that a court (or the RTDRS) could provide depend on the breach. Not all breaches are alike. Some breaches are substantial breaches. Some breaches are less serious.

Section 1(q) of the *Act* defines "substantial breach" as:

(i) on the part of a tenant, a breach of a covenant specified in section 21 or a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial, and

(ii) on the part of a landlord, a breach of a covenant specified in section 16(c);

In this case, it is clear that the Landlord breached section 16(1) when they refused to turn over possession of the rental premises on June 15 as per the agreement. This was a substantial breach as defined by section 1(q)(ii).

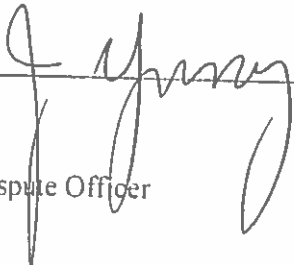
Was the Tenant also in breach of the tenancy agreement on June 15? Clearly July rent was not yet due, so there was no breach for failure to pay July rent. The Tenant says he had \$345 in cash for June rent in his pocket, but did not turn it over because the Landlord's agent would not let him have possession. He has clear proof that he set up the utilities in his name. The only undisputed contractual breach was a failure to secure tenant's insurance. Was that a substantial breach? Probably not. Was it even an enforceable contractual term? I don't know. The Landlord could have made that argument before the RTDRS or a court if they wanted to

enforce it. But, the Landlord was not entitled to take enforcement measures into their own hands and withhold the keys to the rental premises until the Tenant had complied with the tenancy agreement to their satisfaction.

Basically, whether the Tenant committed any sort of breach at all is not relevant. There was a tenancy agreement in place. All the necessary elements of a contract were there: offer, acceptance, consideration (ie. security deposit and promise to pay rent). The Landlord was obligated to provide the rental premises on June 15. Any dispute about the other alleged breaches could be remedied by an application to a court, not by a self help measure of withholding the rental premises.

In this case, what the Tenant is seeking is a retroactive termination of the tenancy as of June 15, 2018. Clearly there was a substantial breach on the part of the Landlord. Termination of the tenancy is a remedy available for such a breach. I grant that remedy. The tenancy is terminated as of June 15 for the Landlord's substantial breach of not making the premises available for occupation by the tenant at the beginning of the tenancy. Because the tenancy is terminated before possession, all money paid by (or on behalf of) the tenant (rent and security deposit) must be returned to the Tenant.

Dated and signed on November 14, 2018 at Edmonton, Alberta.



J. Young
Tenancy Dispute Officer