

DECISION

Dispute Codes MNSD

Introduction

This was a claim by the applicant for the return of a security deposit, including payment of double the amount of the deposit. The hearing was conducted by conference call. The applicant and the respondent participated in the hearing. The applicant was represented by the named advocate, an articulated student acting on her behalf.

Background and Evidence

The respondent is a tenant of the owner of the rental property. In August, 2009 she placed an internet advertisement to rent a room in the rental property. The applicant, then in Ontario responded to the advertisement; she exchanged e-mails with the respondent, agreed to take the room in the rental property for \$575.00 per month beginning on or about August 15th. As requested by the respondent, the applicant paid her the sum of \$575.00 as a deposit and \$287.50 as a half month's rent for August by direct deposit to the respondent's bank account. The respondent told the applicant that she would have "official documents" for her to sign when she arrived.

According to the respondent the expectation was that the applicant would sign a tenancy agreement with the owner of the rental property. The respondent said that the owner prepared a written tenancy agreement, but the applicant refused to sign it.

The applicant acknowledged that the owner prepared a tenancy agreement for her to sign. She said that she did not sign it because she wanted the landlord to perform a condition inspection first and the landlord was unable or unwilling to travel to the rental property to perform the inspection. By the time the owner re-drafted the tenancy agreement to remove reference to a condition inspection, the tenant had given notice that she was moving out and therefore did not sign the agreement. The applicant

testified that on September 15, 2009 she gave the respondent 30 days notice that she would move out on October 15, 2009. The notice was verbal, not written. According to the applicant the respondent asked her to move out by October 1, 2009 so as to make it easier for her to locate a new room-mate for October. The applicant agreed to move out earlier and did move out on September 28, 2009. She left the keys with a handwritten note of her forwarding address when she moved out.

The respondent testified that she did not ask the tenant to move out by October 1, 2009. The respondent testified that she was not the landlord. She provided a letter from the owner wherein he said that the respondent advised him that a room-mate would be moving into the rental unit. The owner agreed and sent an updated rental agreement. He said that the applicant called him: "with concerns about her name being on the contract." The owner said that:

I told (name of applicant) that if we didn't add her to the contract then it was between her and (name of respondent) as to who was paying what portion, but that our point of contact for collecting rent still remained with the name on the contract, which is (name of respondent). So we continued to receive rent on a timely basis (first of the month) from (name of respondent).

After the tenant moved out of the rental unit the respondent gave her a cheque in the amount of \$250.00 dated October 15, 2009. The cheque had the following notation: "\$575 – ½ mo rent - \$25 cleanup & cup."

Analysis and Conclusion

The *Residential Tenancy Act* contains the following inclusive definition of "landlord":

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that respondent, by advertising the rental unit, agreeing to rent to the applicant, and receiving a security deposit and rent in her own name has constituted herself as landlord for the purpose of this tenancy. All of the applicant's dealings have been with the respondent and there is no basis for me to find that anyone other than the respondent is the landlord with respect to the tenancy. The property owner also made his position clear to the applicant when he said that if we didn't add her to the contract then it was between her and the respondent. The respondent's declaration that she is not the landlord does not make it so when she has conducted herself as a landlord.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Arbitration. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

I am satisfied that the applicant provided a forwarding address in writing, and that she served the respondent with documents notifying her of this application as required by the legislation. The respondent refunded only a portion of the security deposit and she did not make a claim to keep any portion of the deposit within 15 days as required by the legislation; the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$650.00, being double the amount of the unpaid portion of the deposit. The applicant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$700.00 and I grant the applicant a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: March 30, 2010.
