DECISION

Dispute Codes MNSD, AS

Introduction

This hearing dealt with an application by the landlord for an order permitting her to retain the security deposit and a cross-application by the tenant for an order for the return of the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2009 and was set to run for a fixed term of one year, ending on July 31, 2009. The agreement identified the tenant as the principal tenant and her roommate, C.H., as a roommate. The tenant paid a $300.00 security deposit at the outset of the tenancy. The parties further agreed that on or about January 4 the tenant contacted the landlord and advised that she would be vacating the unit on January 31 and would advise the landlord when she had secured a tenant to assume the lease. The landlord testified that she had no problem with the tenant assigning her tenancy and the parties agreed that a new tenant, A.U., began residing in the rental unit on February 1 and paid the landlord a $300.00 security deposit.

The tenant testified that in the conversation of January 4 the landlord agreed to permit the tenant to assign the tenancy agreement and made no mention of any claim on the security deposit. The tenant further testified that the landlord did not prepare a written condition inspection report at the end of the tenancy and that the landlord indicated at the end of the tenancy that she would not assign the tenancy to A.U. unless the tenant

agreed to forfeit her security deposit, thereby unreasonably withholding consent to assign the tenancy.

In her written submissions, the landlord claimed that she was entitled to retain the security deposit as a result of a term of the tenancy agreement which stipulated that the security was non-refundable. However, at the hearing, the landlord repeatedly claimed that the tenant had breached the tenancy agreement and that the landlord had suffered administrative costs to enter into the tenancy with A.U. The landlord testified that the tenancy had been assigned to A.U. and the tenancy agreement amended to remove the tenant from the agreement effective January 31. The landlord argued that she did not withhold consent, but that even though the landlord proceeded to assign the tenancy, the tenant interfered with the assignment by refusing to sign the amendment to the tenancy agreement drafted by the landlord in which the tenant forfeit her security deposit and acknowledged that she had breached the tenancy agreement.

Analysis

It is clear to me that this dispute arose out of the landlord's misunderstanding of the meaning of an assignment. An assignment takes place where parties agree that a tenant is released from her obligations and a new tenant assumes those obligations for the duration of the tenancy. When parties agree to an assignment, the tenant who is ending her tenancy is not in breach of the tenancy agreement. The tenant was therefore quite correct in refusing to sign a document acknowledging that she had breached the agreement and agreeing to forfeit her security deposit as a consequence of that breach.

I find that the parties agreed that the tenant could assign the tenancy to A.U. effective February 1. While under normal circumstances the security deposit would remain with the landlord until the end of the assigned tenancy, it is clear in this case that the landlord collected a new security deposit from A.U. and I find that the landlord is obligated to deal with the tenant's security deposit in accordance with the provisions of the Act. I find that the landlord's failure to complete a written condition inspection report at the end of the tenancy has resulted in her having extinguished any claim against the

security deposit pursuant to section 36(2)(c). However, even if the landlord had not extinguished her claim against the deposit, I still would have found that she was not entitled to claim the administrative costs of assigning the tenancy. When the tenant approached the landlord on January 4, it was open to the landlord to make the tenant aware at that time that an assignment would not be considered unless the tenant was prepared to pay for the landlord's administrative costs. I am satisfied that no mention of administrative costs was advanced until the hearing. The landlord's written submissions make it clear that the landlord wished to retain the deposit as a "cure for the breach of the original lease contract." As I have found that there was no breach of the contract as the landlord agreed to permit an assignment of the tenancy, I find that no costs can flow therefrom. The written submissions are also clear that the landlord was purporting to rely on the term of the tenancy agreement whereby the security deposit was to be non-refundable, which is in direct contradiction to section 20(e) of the Act and therefore unenforceable.

Conclusion

The landlord's claim is dismissed. I find that the tenancy has been assigned to A.U. and that as of February 1, 2010 the tenant is no longer liable for rent or for damage to the rental unit. I order the landlord to return the $300.00 security deposit to the tenant forthwith. I grant the tenant a monetary order under section 67 for $300.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 19, 2010