

DECISION

Dispute Codes O, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking an order to have their security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenancy began on or about May 1, 2009. Rent in the amount of \$1800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$900.00.

The tenant testified to the following; the tenant making application today is seeking half of the security deposit as she moved out on August 31, 2010, paid her portion of the security deposit to the person listed on the tenancy agreement, two of the original four roommates have moved out, and feels that although not listed on the tenancy agreement has the right to receive her portion of the security deposit.

The landlord testified to the following; the original tenancy is still in effect as the person who signed the original tenancy agreement still resides in the unit, rented the unit to one person and allowed him to have whatever roommates he wanted and disputes that the applicant is an actual tenant as she is not on any agreement and has no claim to the security deposit.

Analysis

The tenant feels she's entitled to her share of the security deposit even though the tenancy is still in effect. The landlord disputes that.

The matter before me deals with "occupants", *Residential Tenancy Policy Guideline 13* is appropriate in this matter; it states "Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as tenant". No new agreement was entered into by all parties.

The landlord provided documentary and testimonial evidence to dispute the tenant's claim.

The tenant was unable to produce any documentary evidence that she was a registered tenant for this rental unit.

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Conclusion

The tenant's application is dismissed.

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: June 30, 2011.

Residential Tenancy Branch

