



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and MNDC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and for a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy.

Background and Evidence

The Landlord and the Tenant agree that the Landlord entered into a written tenancy agreement, a copy of which was submitted in evidence. The agreement indicates that the Tenant and another person entered into a tenancy agreement for this rental unit and that the tenancy began on February 01, 2009. The agreement is signed by the Tenant and the other person named on the tenancy agreement.

The Landlord contends that the Tenant and the other person named on the tenancy agreement were both tenants. The Tenant contends that she was the Tenant and the other person named on the agreement was a co-resident, as he is identified as a co-resident on page four of the tenancy agreement. The Agent for the Landlord stated that the term co-resident is simply an administrative term used to differentiate the parties living in the unit.

The Landlord and the Tenant agree that a security deposit of \$517.50 was paid on January 22, 2009. The Tenant stated that the Provincial Government paid the security deposit on her behalf and that she has since repaid that amount to the Government. The Agent for the Landlord does not dispute this testimony, however she argued that the security deposit remains with the tenancy for the duration of the tenancy, regardless of who paid the deposit.

The Tenant stated that sometime in August of 2010 she left a letter for the Landlord in which she advised that she would be moving out of the rental unit and that the other person named on the tenancy agreement will be remaining in the rental unit. The Tenant stated that this letter was signed by both tenants. A copy of this letter was not submitted in evidence.

The Agent for the Landlord stated that she does not recall seeing the aforementioned letter, although she recalls being verbally advised of the Tenant's intent to move out of the rental unit, at which time she told the Tenant the tenancy agreement would have to be amended.

The Agent for the Landlord stated that the Landlord sent a Tenancy Agreement Amendment to each person named as a tenant on the tenancy agreement. The Landlord submitted an unsigned copy of this agreement as evidence. The Agent for the Landlord stated that the male named on the tenancy agreement never provided the Landlord with a signed copy of the amendment. The Landlord and the Tenant agree that the Tenant provided the Landlord with a signed copy of the agreement on October 20, 2011.

The Landlord and the Tenant agree that the Tenancy Agreement Amendment that was signed by the Tenant declares that the original tenancy agreement is being amended to remove the Tenant and that the amendment agreement declares that all other terms of the tenancy agreement remain the same and in full force and effect.

The Landlord and the Tenant agree that the Tenant moved out of the rental unit on August 31, 2011 and that the other named tenant continues to reside in the rental unit.

Analysis

On the basis of the evidence presented at the hearing, I find that the Landlord entered into a tenancy agreement with the Tenant and one other person who is identified on the first page of the agreement as a tenant. In reaching this conclusion I was heavily influenced by the tenancy agreement submitted in evidence, which clearly identifies the second party as a tenant and which is signed by the second party. I find it irrelevant that the second party is identified as a co-resident in the body of the tenancy agreement, as I find the intent of the contract to be clear. I therefore find that the Tenant and the other party identified as a tenant on the agreement shared the same rights and obligations of this tenancy.

On the basis of the evidence presented at the hearing, I find that a security deposit of \$517.50 was paid in relation to this tenancy on January 22, 2009. Section 1 of the *Act* defines a “security deposit” as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include post-dated cheques for rent; a pet damage deposit; or a fee prescribed under section 97(2)(k). In my view, a security deposit is money paid to a landlord for certain liabilities and obligations related to the tenancy.

I find that the Landlord is entitled to retain this deposit for the duration of the tenancy, regardless of who paid the security deposit. I therefore have made no finding on whether the deposit was paid by the Provincial Government paid the security deposit as a benefit to the Applicant Tenant, as that issue is not relevant to my decision.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Even if I were to accept that the Tenant provided the Landlord with written notice of her intent to vacate the rental unit, I find that this notice would not have served as notice to end the tenancy pursuant to section 45 of the *Act*. In making this determination, I was heavily influenced by the Tenant’s testimony that she advised the Landlord that her co-tenant would continue to reside in the rental unit. In my view, this notice did not serve to end the tenancy itself. Rather, it served as notice that the Tenant intended to vacate the rental unit but that the tenancy would continue.

In making this determination I was further influenced by the testimony of the Agent for the Landlord, who informed the Tenant that the tenancy agreement would need to be amended to remove the Tenant from the agreement, and by the fact that the Tenant eventually signed the agreement indicating she wished to have the original tenancy agreement amended.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. As the co-tenant remains in the rental unit, I cannot conclude that this tenancy ended pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

In my view, this tenancy has not been ended in accordance with the *Act*, although the Landlord and the Tenant have taken steps to amend the tenancy agreement. I have made no determination on whether or not the tenancy agreement has been amended, given there is no evidence that the other tenant named on the agreement has agreed to the amendment. I find that whether or not there has been an agreement to amend the original tenancy agreement is not relevant to my decision in this matter.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the tenancy has not yet ended. I therefore find that the Landlord is not yet obligated to return the security deposit to either party.

Conclusion

As the Landlord is not yet obligated to return the security deposit, I dismiss the Tenant's application to recover the security deposit.

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: October 27, 2011.

Residential Tenancy Branch