



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's family's application for the return of double the tenants security deposit and to recover the filing fee from the landlords for the cost of this application.

The family for the tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenants family provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants family entitled to recover double the security deposit on behalf of the tenant?

Background and Evidence

Both parties agree that this tenancy started on May 18, 2011. The tenants paid a security deposit of \$350.00 on May 18, 2011.

The tenant's mother attending the hearing today on behalf of her deceased son testifies that her son paid the security deposit to the landlord. The tenants mother states she has not been appointed administer or executor of her son's estate but has power of attorney

for his accounts and is doing the paperwork as his next of kin. The tenant's mother states her son passed away in the rental unit on July 16, 2011. He was not found until July 17, 2011 by his girlfriend, the other tenant.

The tenants mother testifies she included her sons girlfriend on a schedule of parties for this hearing but did not give her the documentation required for the hearing but did send her a text message with the date, time to dial into the hearing. The tenant's mother states that she has filed this application on behalf of her son and not the other tenant.

The tenant's sister testifies that her brother's girlfriend told them that her brother had given the landlord written notice to end the tenancy for the end of July, 2011. After her brother passed away the other tenant was at the unit cleaning up. The tenant's sister states that her brother and his girlfriend had had an argument and his girlfriend was removed from the property by the police therefore, ending her tenancy.

The family for the tenant state they spoke to the landlord about the return of the security deposit and were told by the landlord that he would give some of it back. The family for the tenant have provided copies of text messages between the female tenant and the mother of the other tenant and state in these messages the female tenant told them she would work something out and the landlord said he would give some money back. The mother for the tenant states the landlord failed to return any of the security deposit so the family for the tenant now seek to recover double the security deposit and their filing fee of \$50.00.

The landlord testifies that it was the female tenant who paid the security deposit from her account and he has provided a copy of the INTERAC e-transfer email. The landlord testifies that he was away when the male tenant passed away in the unit and was notified of this by the female tenant who told them that due to the circumstances she did not want to return to the unit. The landlord states he never received written notice to end the tenancy from either of the tenants. He states after the male tenants sister spoke to him in August concerning the return of the security deposit he spoke to his lawyer who

advised the landlord to speak to the female tenant about the deposit first. The landlord got hold of the female tenant and informed her of the other tenant's sister's request. The landlord states the female tenant told him verbally to keep the deposit and told him she would put something in writing for him.

The landlord testifies that after he received the application for Dispute Resolution from the male tenant's family he again contacted the female tenant and reminded her to put something in writing about agreeing the landlord could keep the deposit. The landlord has provided an e-mail in evidence from the female tenant in which she confirms that she agreed the landlord could keep the deposit because they had not given him proper notice to end the tenancy and she had not cleaned the unit properly. The landlord states he did give the female tenant \$50.00 back from the deposit because she was struggling at the time.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the matter of the security deposit;

I understand the circumstances relating to the end of this tenancy and I have great sympathy for the male tenants family regarding his unexpected death however as the family of the male tenant do not have authorization to deal with this matter and were not party to the tenancy themselves then they are not entitled to file a claim for the return of the security deposit on behalf of the deceased tenant.

I also refer the parties to this hearing to the Residential Tenancy Guidelines # 13 which states, in part, that co-tenants are two or more tenants who rent the same property under the same tenancy agreement (whether this is a written or verbal agreement). Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy.

This means if one of the tenants elects to end the tenancy and provide written authorization that the landlord is allowed to keep the security deposit in lieu of rent or cleaning then that tenant is entitled to do this. Having reviewed the evidence provided by the landlord the female tenant has exercised her right to allow the landlord to keep the security deposit and has provided written authorization to this effect.

Consequently, the application made by the male tenant's mother on behalf of her deceased son is dismissed without leave to reapply. As the female tenant named in the schedule of parties did not file this application and has simply been named as a tenant on the schedule of parties it is deemed that she is not party to this hearing or the decision rendered today.

Conclusion

The application for the return of double the security deposit and to recover the filing fee is dismissed without leave to reapply.

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: December 01, 2011.

Residential Tenancy Branch