



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to recover the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing. The tenant also had a translator. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant 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

- Is the tenant entitled to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that the tenant signed a tenancy agreement with his co-tenant to rent this unit from the landlord starting on November 01, 2011. The monthly rent for this unit was \$825.00 per month and the tenant's share of the rent was \$412.50. Rent was due on the

first of each month. The tenant also paid a share of the security deposit to the sum of \$206.25.

The tenant testifies that he told the landlord in October that he would not be able to move into the rental unit due to his medical condition. The tenant testifies that he put a letter under the landlord's door on October 21, 2011 which contained the tenants forwarding address along with some other documentation. The tenant states the landlord has not returned his share of the security deposit or the tenant's share of the rent and so the tenant seeks a Monetary Order to recover these from the landlord.

The landlord testifies that on October 28, 2011 she arrived home and found three documents under her door. One of these was a copy of the tenancy agreement, one was a copy of the two receipts given to the tenant for his share of rent and the security deposit and the third was a copy of a letter sent to the co-tenant by this tenant explaining to the co-tenant why this tenant would not be moving into the unit. The landlord testifies that nowhere in this documentation was there the tenants forwarding address. The landlord reads the letter addressed to the co-tenant which she had in her possession.

The landlord testifies that as soon as she got these documents she called the co-tenant and the co-tenant informed the landlord that the other tenant would not be moving into the rental unit with him. The co-tenant also informed the landlord that he would still be moving in and would look for a new roommate. The landlord testifies that she agreed this other co-tenant could move into the rental unit as arranged.

The landlord testifies that this tenant did not give the landlord one month's written Notice to end his tenancy and as such he is not entitled to recover the rent he paid for his share of the rental unit. The landlord testifies that as the tenancy continued and the tenants were joint tenants she is not obligated to return this tenant's security deposit as the tenants are both responsible for that deposit. However, the landlord testifies the other co-tenant has indicated to her that he would be willing to reimburse this tenant his share of the security deposit if he contacts him about it.

The tenant testifies that he had a witness with him when he put the letter with his forwarding address under the landlord's door. The tenant did not attempt to contact this witness and did not provide contact details for this witness.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover his security deposit, The landlord has testified that she has not received the tenants forwarding address in writing and the letter the tenant put under her door was the letter the tenant sent to his co-tenant and not one for the landlord. The landlord was able to read this letter out to confirm the details contained within it. I am satisfied that this letter was for the tenants co-tenant and not the landlord and am also satisfied that this letter did not contain the tenants forwarding address and is a different letter that the tenant has provided in evidence.

I refer the parties to the Residential Tenancy Policy Guidelines # 13 which states in part, where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

Consequently, as the co-tenant has moved into the rental unit then the landlord has entered into a new tenancy agreement with that tenant and as such the landlord must return the portion of the security deposit paid by this tenant within 15 days of receiving his forwarding address. The landlord would then be able to recover this from the other co-tenant as that co-tenant has now assumed responsibility for the tenancy. The tenant's application is therefore deemed to be premature for the return of his security deposit as there is no

evidence to support the tenant's claims that he gave the landlord his forwarding address in writing and therefore this section of the tenants claim is dismissed with leave to reapply.

With regard to the tenants claim to recover the rent paid of \$412.50 for his share for the first month's rent. As the tenant did enter into a tenancy agreement and failed to provide one clear months written Notice to end the tenancy this tenant remains responsible to pay his share of the rent for November, 2011 and as such is not entitled to recover this amount from the landlord because he did not move into the unit. Therefore this section of the tenants claim is dismissed without leave to reapply.

Conclusion

The tenants claim to recover his security deposit is dismissed with leave to reapply.

The tenants claim for money owed or compensation for damage or loss 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: February 10, 2012.

Residential Tenancy Branch