



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application for return of double the security deposit. The landlord did not appear at the hearing. The application submitted that the respondent was served with notice of this proceeding via registered mail sent to his current residence. The applicant provided a copy of the registered mail receipt as proof of service and testified that she knows of the landlord's current address because her former roommate still resides with the landlord. The applicant further testified that she had met the respondent in person the night before this hearing and they briefly talked about the scheduled hearing.

I was satisfied the respondent had been served with notice of this proceeding and I continued to hear from the applicant.

As there were two applicants identified on the application and only one applicant appeared and only one applicant signed the application, I enquired as to the relationship between the co-applicants. I heard that the two applicants had individual agreements with the landlord. I found the relationship between the two applicants not consistent with a co-tenancy and, with consent, amended the application to exclude the applicant who was not in attendance at the hearing.

During the course of the hearing, I heard several statements that caused me to consider whether I had jurisdiction to resolve this dispute. Accordingly, jurisdiction is an issue to be decided.

Issue(s) to be Decided

1. Does the Act apply to this living arrangement and do I have jurisdiction to resolve this dispute?
2. If the Act applies, is the tenant entitled to recovery of double her security deposit?

Background and Evidence

The applicant moved into the residential property in July 2010 and she was provided use of the loft space in exchange for \$450.00 per month in rent and payment of a \$225.00 security deposit. Other areas of the residential property were shared with other occupants and the respondent. The applicant also paid a \$450.00 “commitment” fee for the period of July – October 2010 which she understood would be forfeit if she did not stay until October 2010 or applied to last month’s rent if she stayed longer than October 2010.

In late October 2010 the applicant agreed to stay until June 2011; however, starting November 2010 the applicant no longer had use of the loft space exclusively as the respondent brought in another person to share the loft space with her. In March 2011 the respondent told the applicant to leave and she vacated the rental unit March 31, 2011.

The applicant stated that the respondent was a tenant of the residential property himself and that she had asked him several times for the name of his landlord but he would not divulge the information. The applicant was of the position the respondent was acting as agent for the landlord or owner.

The applicant submitted that she requested return of her security deposit several times and provided her forwarding address to the respondent via email. The respondent received the emails as he responded via email to inform the applicant that she would not be receiving any of her security deposit back from him.

In addition to return of double the security deposit the tenant is seeking to recover the “commitment fee” she paid since she paid rent up to and including the month of March 2011 and was not able to utilize the commitment fee as last month’s rent because the respondent told her to leave the property during the month of March 2011..

As evidence, the applicant provided copies of: receipts for the payment of the security deposit and the “commitment” fee; and, several email communications between the parties before and after the applicant moved out of the residential property.

Analysis

The Act applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas.

By definition a tenancy agreement includes oral agreements. A rental unit may be any living accommodation that is rented or intended to be rented to a tenant. A landlord, as defined by the Act, includes the owner of the rental unit, the owner's agent, or another person who acts on behalf of the landlord to permit occupation of the rental unit under a tenancy agreement and exercises the powers and performs duties under the Act or tenancy agreement.

The applicant has submitted that the respondent was acting as an agent for the owner or on behalf of the landlord and exercised duties of a landlord such as providing the applicant possession of the rental unit, taking a security deposit, collecting rent, and issuing receipts. I accept that these activities are all indications the respondent was exercising powers under the Act or a tenancy agreement. While the evidence is not conclusive, in the absence of the respondent at the hearing or any evidence to the contrary, I accept the applicant's submission that the respondent was acting on behalf of the landlord or owner. Therefore, I have accepted that the Act applies to the agreement between the applicant and respondent and I have jurisdiction to resolve this dispute.

With respect to the security deposit, I find the tenant entitled to return of the single amount of the security deposit. As I was provided evidence that the landlord failed to meet obligations to complete move-in or move-out inspection reports and did not have the tenant's written consent to make deductions from the security deposit, I find the landlord extinguished any right to retain the tenant's security deposit. I have not ordered double the security deposit as the tenant did not give her forwarding address to the landlord in writing. Communication sent via email is not recognized as being in writing. Therefore, I award the tenant the single amount of \$225.00 for return of the security deposit.

With respect to return of the "commitment" fee or last month's rent, I find this is a sum that the landlord was not entitled to collect from the tenant under the Act. The Act provides for specific items for which a tenant is responsible for paying and a "commitment" fee is not a permissible fee payable to a landlord. Therefore, this amount is recoverable by the tenant and I award her recovery of the \$450.00 paid to the landlord as a "commitment" fee.

As the tenant has been largely successful in this application I award the filing fee to her.

In light of the above, the tenant is provided a Monetary Order in the amount calculated as follows:

Return of security deposit	\$ 225.00
Return of "commitment" fee	450.00
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 725.00

The tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

I have found jurisdiction to resolve this dispute. The tenant has been provided a Monetary Order in the amount of \$725.00 to serve upon the landlord and enforce in Provincial Court as necessary.

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: March 23, 2012.

Residential Tenancy Branch