



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD

Introduction

This hearing dealt with an application by the tenant seeking the return of double the security deposit. 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 double the security deposit?

Background and Evidence

This tenancy involves three roommates. The tenancy began on or about August 1, 2009 and continues as of today's date. 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 tenants a security deposit in the amount of \$900.00. The subject tenant of today's hearing is seeking $1/3$ of the total deposit $\times 2 = \$600.00$.

The subject tenant gave the following testimony; paid his share of the deposit to his roommate to be forwarded to the landlord, obtained another party to take over his place in the tenancy on June 1, 2011 as he was planning on travelling to Europe for a year and made this arrangement without the landlords knowledge or permission, returned back from Europe to find that he was unable to move back in, was trying to get the deposit back from his roommate but was unable to establish any contact, sent the landlord two letters requesting his share of the security deposit, the landlord refused , and is now seeking the return of double his share.

The landlord gave the following testimony; was never informed of the sublet agreement that the tenant arranged nor did he give his approval, always dealt with another roommate in terms of payment of rent and posting of the deposit, never received any payments of either from the subject tenant, was told by the remaining parties that the subject tenant has already received his portion of the security deposit, would have gladly accommodated this tenant if he had arranged the new sublet tenant with the landlord and could have dealt with the exchange of the security deposit, feels that since the tenancy is still ongoing he should retain the full \$900.00 security deposit in trust.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenant must prove their claim. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant was unable to provide any documentation to support his payment of the security deposit. In the tenant's own testimony he acknowledged that he had paid his portion of the security deposit to his roommate and further acknowledged that he had never informed the landlord of his sublet arrangement.

A security deposit collected by the landlord under the Act is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is party to the agreement has authority to that deposit. Further, 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 a tenant. Given the evidence of both parties during the hearing in relation to the re-apportioned assumption of the original security deposit between themselves, and the fact that the tenancy did not end with the original two of the three tenants, it can be inferred that all parties agreed to amend the original tenancy agreement to include the new occupants as tenants with each tenant having authority in relation to the deposit and therefore the

rights and responsibilities as tenant's. Given the continued occupancy by an original tenant over the period of tenancy, I find that the tenancy therefore did not end and remains intact.

For the above reasons the tenant has not been able to satisfy me of their claim and I therefore dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application 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: September 17, 2012.

Residential Tenancy Branch