



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This hearing concerns the tenant's application for a monetary order reflecting the double return of the security deposit. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The rental unit which is the subject of this dispute, is one of three rooms rented in the lower level of a two level house. The landlord, who is also the owner of the house, testified that his own room is also located on the lower level of this same house and that his room is separate and distinct from the three rooms which are rented. One bathroom and one kitchen are located on the lower level, and the landlord testified that he and all three renters on the lower level share that bathroom and kitchen.

Three separate rented rooms are also located upstairs. All upstairs renters make use of one bathroom and one kitchen which are located in the upstairs portion of the house.

There is no written tenancy agreement in evidence for this tenancy which began on or about July 8, 2012. Monthly rent is \$400.00 and a security deposit of \$200.00 was collected. The tenant testified that he vacated the unit on November 1, 2012, and then subsequently gave oral notice to end tenancy. By letter dated November 8, 2012, the tenant gave formal notice of his having vacated the unit, provided his forwarding address, and requested the return of his security deposit.

The landlord testified that the tenant failed to give proper notice to end the tenancy, and that he left some of his possessions behind which have been packed up in boxes and still remain at the house. Further, the landlord testified that as he himself shares a bathroom and kitchen with the downstairs tenants when he resides in his room,

pursuant to certain provisions in the Act, this dispute falls outside the jurisdiction of the Act. The landlord testified that work and family commitments preclude him from being a resident in the house on a consistent seven days per week basis. Despite the landlord's attempts to describe the location of his room in the lower level, the tenant testified that he could not understand where exactly the landlord's room was situated.

The landlord proposed that if the tenant removed all of his remaining possessions from the house by no later than March 31, 2013, he would be prepared to return \$100.00, or half the original security deposit. Should the tenant wish to pursue that proposal, the landlord suggested that the tenant contact his agent who is also a renter at the house and is known to the tenant, in order to make the necessary arrangements.

Analysis

Section 4 of the Act speaks to **What this Act does not apply to**, in part as follows:

4 This Act does not apply to

(c) living accommodation in which the tenant shares a bathroom or kitchen facilities with the owner of that accommodation.

Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlord, who is also the owner of the house, shared bathroom and kitchen facilities with the tenant. In the result, I find that the circumstances of this dispute do not fall within the jurisdiction of the Act. The application is therefore dismissed.

Conclusion

The tenant's application is hereby dismissed.

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 11, 2013

Residential Tenancy Branch

