



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 678254 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

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

The tenant, an occupant and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided limited 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.

Preliminary Issues

The parties agreed that the rental unit was rented by this female tenant and another male tenant. The male tenant named on this application was not a tenant on the tenancy agreement but was an occupant at the rental unit. Therefore any Monetary Orders issued will be in the name of the female tenant only.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for the return of the security deposit?

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

Background and Evidence

The parties agree that this tenancy started on October, 01, 2012. Two tenants rented the unit on one tenancy agreement as co tenants. Rent for this unit was \$900.00 at the start of the tenancy raising to \$975.00 when the other occupant moved into the unit. Rent was due on the first day of each month and the tenants and occupant split the rent to \$325.00 each. The tenants paid a security deposit of \$450.00 at the start of the tenancy. This tenant and the occupant moved from the rental unit on November 09, 2013 and this tenant provided the landlord with a forwarding address in writing on November 30, 2012.

The tenant testifies that the landlord has not returned the tenant's share of the security deposit within 15 days of receiving the tenants forwarding address in writing. The tenant seeks to recover the security deposit of \$250.00. The tenant testifies that the other tenant forced them to move out and that tenant stayed in the rental unit.

The tenant testifies that the occupant paid his share of the rent of \$325.00 however the tenant named on this application did not pay her share of the rent as she was waiting for the Ministry to help pay her rent. The tenant testifies the landlord served them with a 10 Day Notice to End Tenancy on November 07, 2012 saying they owed rent of \$325.00 and so they moved from the rental unit on November 09, 2012. The occupant attending the hearing therefore seeks to recover the rent he paid for November of \$325.00 from the landlord.

The landlord testifies that the female tenant and the occupant asked to be moved to another unit and gave the landlord notice to vacate on October 23, 2012. The tenants were waiting for a one bedroom suite to be available and remained living in the rental

unit at the start of November, 2012. The other tenant living in the unit moved out in December, 2012. The landlord testifies that there was damage caused to the unit so the tenants' security deposit has been withheld.

The landlord testifies that there is still outstanding rent owed for November, 2012. The female tenant had informed the landlord that she did not get paid until the 7th of the month and so the landlord held off serving the 10 Day Notice until then when no rent was forecoming on that day from the female tenant. The landlord testifies that the tenants still owe rent of \$325.00 for November, 2012.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the tenant to the Residential Tenancy Policy Guidelines # 13 which states, in part, co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement and co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Consequently, it is my decision that the tenant who filed this application is not entitled to recover the sum of \$325.00 for rent paid by an occupant as the tenants are jointly and severely responsible for the rent under the terms of the tenancy agreement. As the sum of \$325.00 is agreed as still being outstanding then the tenant's application is dismissed without leave to reapply.

With regard to the tenants application for the return of the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either

return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenants.

Based on the above and the evidence presented I find that the landlords did receive this tenants forwarding address in writing on November 30, 2012. However as the other tenant did not leave the rental unit until sometime in December, 2012 the 15 days would start at the time the other tenant ended the tenancy. As the date that tenant moved out has not been determined at the hearing I must find that the 15 days started on December 31, 2012. As a result, the landlords had until January 15, 2013 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit. Therefore even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant.

It is up to the tenants to apportion the security deposit among themselves. The tenant will receive a Monetary Order to the sum of \$900.00 pursuant to section 38(6)(b) of the *Act*..

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$900.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenants claim to recover rent paid to the landlord 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: April 25, 2013

Residential Tenancy Branch

