



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNSD, MNDC

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant for a monetary order for the refund of double the security deposit and compensation for damage or loss under the Act. The total amount of the damages being claimed according to the application was \$3,000.00. However, the tenant amended the application and is now only seeking a refund of double the security deposit in the amount of \$1,500.00.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?

Background and Evidence

The tenancy began on September 15, 2009 and a copy of the tenancy agreement was submitted into evidence indicating that a female and a male, were sharing the suite as co-tenants. The rent was \$1,500.00 and a security deposit of \$750.00 was paid.

The application for this dispute resolution hearing was submitted by the female co-tenant. Her position is that the landlord had failed to return the tenants' security deposit after the tenant had vacated on March 30, 2011 and the landlord had wrongly kept the funds without obtaining an order to do so.

The tenant acknowledged that the male co-tenant had given the landlord written permission to retain the \$750.00 security deposit. However, the tenant pointed out that, although the tenancy agreement names both the male and female as co-tenants, she was the only tenant who actually signed the tenancy agreement. The tenant stated that, because she was not the person who signed over the security deposit to the landlord herself, the written permission given by the male co-tenant was not valid.

The parties both testified that on March 4, 2011, the tenants sent the landlord a written notice of their intent to terminate the tenancy effective March 31, 2013. A move out inspection was completed on March 31, 2013, attended by the male co-tenant.

The landlord testified that the tenant's Notice to End Tenancy was not in compliance with the Act, which requires one month notice effective the day before the day rent is due.

The landlord testified that, in addition to the move-in and move-out condition inspection reports completed at the end of the tenancy, they had also supplied a form attached to the lower part of the second page of the condition inspection report titled, "**SECURITY DEPOSIT STATEMENT**".

A copy of this completed form was in evidence and included a listing of potential cost items that may be claimed by the landlord under various headings. The form indicated that the landlord was holding \$750.00 in trust for the tenant as the security deposit.

The landlord pointed out that, beside the line, "**Unpaid Rent/Late Fees**", was written a notation stating, "**April Rent 1500**". The landlord testified that this amount had been requested by the landlord because the tenant had not provided sufficient notice to end the tenancy and the landlord had not found a tenant for April 2011 thereby incurring a loss of \$1,500.00.

The landlord testified that the co-tenant had agreed to the claim of the landlord. The following statement was located near the bottom of this document:

"I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposit and/or Pet Damage Deposits. If the total owing to the landlord exceeds my deposit(s), I agree to pay the Landlord the excess amount".

Underneath this statement, at the bottom of the form, was a hand-written signature in the space marked "*Tenant's Signature*" and the date shown beside the signature was 03/31/2011. The landlord's signature and the same date were located below that.

The landlord's position is that the security deposit was validly signed over to the landlord to cover a liability. The landlord pointed out that they had accepted the

retention of the \$750.00 security deposit in full satisfaction of all monies owed and had voluntarily waived the remaining \$750.00 portion of the debt.

Analysis

With respect to the return of the security deposits and pet damage deposits, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either:

- a) repay the security deposit or pet damage deposit to the tenant with interest or;
- b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

However, section 38(4) of the Act states:

A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

In this instance both parties acknowledged that the tenant's security deposit was signed over to the landlord. But the tenant has taken the position that the consent given by her co-tenant was not valid because, despite being named as a party of the agreement, the male tenant had not signed the tenancy agreement.

I find that, Residential Tenancy Guideline 13, clarifies the rights and responsibilities relating to multiple tenants renting and sharing the same premises under one tenancy agreement and indicates:

Co-tenants are two or more tenants who rent the same property under a single tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants always have equal rights under the tenancy agreement.

Co-tenants are also 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.

A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.

I find that the male resident had been equally accepted as a tenant by the landlord and was named as a co-tenant on the tenancy agreement. I also find that the male co-tenant had interacted with the landlord with respect to tenancy issues that had arisen in the past, including the written Notice to End Tenancy and actively participated in suite inspections conducted by the landlord during the tenancy.

Although, I find that, on the Security Deposit Statement form signed by the co-tenant, the landlord had incorrectly identified the \$1,500.00 for the month of April as “rent”, instead of loss of revenue or damages, I still must find that the tenants are both bound by the signed permission allowing the landlord to retain the \$750.00 security deposit.

Based on the evidence before me, I have determined that the tenant’s application seeking a monetary order for the security deposit has no merit. I hereby dismiss the tenant’s application without leave.

Conclusion

The tenant is not successful in the application as the security deposit was already surrendered to the landlord in writing and the tenant’s claim is 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: May 15, 2013

Residential Tenancy Branch