



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 convened by way of conference call in response to the tenant's application for a Monetary Order for double the security deposit less an amount already returned and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and a Lawyer for the landlord attended the conference call hearing, the tenant gave sworn testimony and the parties were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover double the security deposit less an amount returned to the tenant?

Background and Evidence

The parties agree that this tenancy started on February 01, 2012 for a fixed term which was not due to expire until February 01, 2013. Rent for this unit was \$900.00 per month and was due on the first day of each month. There were two tenants named on the tenancy agreement and the tenants paid a security deposit of \$450.00 on January 20, 2012 although the cheque was written by the other tenants not attending the hearing.

The tenant testifies that the landlord did not complete a move in or move out condition inspection report for the rental unit, with the tenants at the start and end of the tenancy. The tenant testifies that the tenancy ended on September 01, 2012 and the tenants provided the landlord with a forwarding address by email on September 01, 2012. This address was amended and the new address was given to the landlord in writing on April 11, 2013. The tenant testifies that the landlord has returned the amount of 86.92 on September 11, 2012 however the landlord has retained the amount of \$363.08 without either of the tenants' written permission.

The tenant testifies that although the other tenants wrote the cheque from her account for the rent and security deposit both tenants contributed equally to these payments. The tenant testifies that originally both tenants had filed this application together but the other tenants took her name off the application after receiving a letter from the landlord's lawyer threatening the tenants with action through the small claims court.

The tenant seeks to therefore recover double the security deposit of \$900.00 less the amount returned by the landlord of \$86.92.

The landlord's Lawyer states that this tenant is not entitled to recover the security deposit because the other tenants paid the security deposit. The landlord returned the amount of \$86.92 to the other tenants and not this tenant. The landlord's Lawyer states that the tenants left significant damages in the rental unit and so part of the security deposit was withheld to remedy these damages.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants 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 tenant 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 tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address by e-mail on September 01, 2012 and in writing on April 11, 2012. Generally as e-mail is not recognized as a correct method to provide a forwarding address in writing; I must find that the landlord received the tenants forwarding address in writing on April 11, 2013. As a result, the landlord had until April 26, 2013 to return all of the tenants' security deposit. I further find as the landlord failed to complete a move in or a move out condition inspection report with the tenants in accordance with s. 24(2)(c) and s. 36(2)(c) of the *Act* that the landlord has extinguished their right to file a claim against the security deposit and therefore should have returned the security deposit within the allowable 15 days.

The landlord's lawyer has argued that this tenant did not pay the security deposit and is therefore not entitled to file a claim for double the security deposit. I refer the landlords Lawyer to the *Act* s. 1 which deals with definitions of wording in the *Act* this section states:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

Where there are co-tenants under the same tenancy agreement these tenants have the same rights and obligations under the *Act*. It does not make any difference which tenant wrote a cheque for the security deposit or even if, for example, one of the tenants parents or Welfare had paid the security deposit, either tenant or both tenants are entitled to file a claim for the return of the security deposit and then apportion any monies owed between themselves.

Therefore, I find that the tenant has established a claim for the return of double the security deposit of \$900.00 less the amount already returned of \$86.92 pursuant to section 38(6)(b) of the *Act*. As the tenant has been successful with this claim I find the tenant is entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the tenant for the amount of \$863.08

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$863.08**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

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: June 13, 2013

Residential Tenancy Branch