



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creighton & Associates Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord seeks a monetary order for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant seeks a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?
Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on November 1, 2010 on a fixed term tenancy until October 31, 2011 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,050.00 payable on the 1st of each month and a security deposit of \$525.00 was paid on October 14, 2010.

Both parties agreed that the Tenant moved-out of the rental unit in mid May of 2011. The Tenant states that she was given verbal permission to sublet the rental unit for the remaining months from the Landlord's agent. The Landlord disputes this stating that this is not their practice as shown in section 16 of the signed tenancy agreement which

provides that “written consent of the Landlord” is required. Residential Tenancy Branch File No. 785620 where a finding was made that the subtenant had a separate tenancy for occupancy between August 1 to August 31, 2011. Both parties agreed that the Tenancy ended on August 31, 2011, when the subtenants vacated the rental unit and possession was returned to the Landlord.

The Tenant seeks a monetary order for the return of double the security deposit as she states that the Landlord did not return the \$475.00 security deposit within 15 days of the end of the tenancy or when the Tenant’s forwarding address in writing was received. The Tenant states that the forwarding address in writing was given to the Landlord in September of 2011. The Landlord disputes this claim. The Tenant also states that the forwarding address in writing was also given on December 7, 2011 in a letter dated the same date. The Landlord dispute this claim as well. The Tenant has submitted a copy of a Canada Post Registered Mail print out of an online tracking which states that the letter was received on December 8, 2011 by Canada Post Registered Mail and signed for. The Landlord identified the signatory as an agent of the Landlord.

The Landlord seeks an amended monetary claim of \$800.00. This consists of \$400.00 for liquidated damages for ending the tenancy prematurely as per section 5 of the signed tenancy agreement. The Landlord also seeks a claim for \$400.00 which is for \$100.00 per month for two months for two “additional/unauthorized” occupants as per section 6 of the agreement. The Tenant disputes these claims stating that verbal permission was granted by the Landlord’s agent regarding a sub-tenancy which allowed the two subtenants to occupy the rental unit. The Landlord disputes this stating that any approval must be done in writing as per section 13 and 16 of the signed tenancy agreement. The Tenant stated in her direct testimony that she was aware of the written requirement but that the Landlord’s agent expressly told her that it was not required. The Landlord reiterates that this is disputed and is contrary to the signed tenancy agreement.

Analysis

I find that the Tenant has established a claim for the return of double the security deposit. Both parties agreed that the tenancy ended on August 31, 2011 and that the Landlord has not returned the security deposit. I prefer the evidence of the Tenant over that of the Landlord. The Tenant has provided a copy of a letter dated December 7, 2011 that provides her forwarding address in writing requesting the security deposit be sent to this address and as well it refers to an earlier request letter sent in September 2011. The Tenant has also provided the Canada Post Registered Mail Customer Receipt Tracking number and the online printout confirming that the package was

received by an agent of the Landlord. The Tenant has established a monetary claim of \$1,050.00. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant has established a total monetary claim for \$1,100.00.

I find that the Landlord has also established a monetary claim. It is clear based upon the Tenant's direct testimony that the Tenant was aware of these terms in the signed tenancy agreement. I prefer the evidence of the Landlord in this regard over that of the Tenant. The Tenant breached the signed tenancy agreement by vacating the rental unit and having additional occupants in the rental unit that were not named in section 2 of the agreement. It is also clear that the Tenant ended the Tenancy prematurely on August 31, 2011 as opposed to the fixed term tenancy ending on October 31, 2011. I find that the Landlord has established a monetary claim for the liquidated damages of \$400.00 and that of the \$400.00 for having additional occupants not named in the signed tenancy agreement. The Landlord is also entitled to recovery of the \$50.00 filing fee. The Landlord has established a total monetary claim for \$850.00.

In offsetting these claims, \$1,100.00 (Tenant's claim) - \$850.00 (Landlord's claim) = \$250.00. The Tenant is granted a monetary order for \$250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$250.00.

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: August 23, 2013

Residential Tenancy Branch

