



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

The tenants apply for return of a \$637.50 security deposit and a \$ 637.50 pet damage deposit, both doubled pursuant to s.38 of the *Residential Tenancy Act* (the "Act").

The facts are not in dispute, however, the respondent argues that the tenants must collect their deposits from the owner of the property.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show that the tenants are entitled to the relief requested?

Background and Evidence

The rental unit is a three bedroom house. The tenancy started in June 2010 for a two year fixed term at a monthly rent of \$1275.00. It ended May 31, 2012. The respondent received the tenants' forwarding address in writing in July 2012.

The written tenancy agreement shows that the parties are the two applicant tenants on the one hand and the respondent CRPM on the other. The document is printed on the letterhead of CR "Group." While it clearly indicates that the applicants are the tenants, it does not identify CRPM as the "landlord." Rather, the agreement provides"

The term "LANDLORD" is generally defined by the Residential Tenancy Act as being the owner of the property and in the case of this agreement shall be defined as the property owner.

Clause 9 of the tenancy agreement deals with the security deposit (and perhaps the pet damage deposit too). It provides:

A security deposit in the sum of \$637.50 is payable by the tenant at the time of signing this Agreement to secure the Tenant's performance of the obligations imposed by this Agreement and of those imposed by the Law of the Province of British Columbia under the Residential Tenancy

Act. Acknowledgement of this security deposit by the Property Manager will be by separate receipt.

The Tenant acknowledges and agrees that the security deposit paid by the Tenant is paid to the Property Manager as the representative of the Landlord and that it will be the Landlord, rather than the Property Manager, who will be responsible for returning the security deposit and accumulated interest to the Tenant upon termination of the tenancy. If the tenant has been given notice under the tenancy act for a two month notice (Landlords use of property), the owner of the property is held responsible for providing one month free rent to the tenant, NOT COAST REALTY, ACTING AS AGENT FOR THE OWNER.

Above the deposit amount the words "security & pet deposit" are written contained in parenthesis and another "\$637.50" and "TOTAL: \$1275" written above the top line.

The tenancy agreement does not disclose who the owner is. Neither the tenancy agreement nor any other document produced at hearing shows the owner's acknowledgement or confirmation of the relationship, rights and obligations in the tenancy agreement.

The attending tenant's undisputed testimony is that the tenants were not aware of the respondent CRPM's position or defence to their claim until this hearing. It is apparent that CRPM has never informed the tenants who the "owner" is.

Analysis

I find that CRPM's defence cannot succeed.

First, there is no evidence that any owner has authorized anyone to act on his or her behalf, as an agent or otherwise. That lack is fatal to the defence (see *Hav-A-Kar Leasing Ltd. v. Vekselshtein*, 2012 ONCA 826). Indeed, there is no evidence of who the owner even is.

Secondly, the wording of clause 9, above, while purporting to impose the "responsibility" for returning the security deposit (though not the pet damage deposit) on the unnamed owner does not go so far as cast a legal responsibility onto the owner. The clause may be referring to an arrangement between the owner and agent; a practical matter. The wording falls short of imposing a prohibition on the tenants from claiming against CRPM, the entity that actually received the deposits.

In my view CRPM was the landlord. Despite its attempt to create a landlord and tenant relationship between these tenants and the owner, it could not do so without, at least, naming the owner.

I find the tenants are entitled to a return of their \$1275.00 deposits from the respondent CRPM. I find that the landlord is CRPM and it has not complied with s. 38 of the *Act*. The tenants are entitled to the doubling of the deposits to \$2550.00, plus recovery of the \$50.00 filing fee.

Conclusion

There will be a monetary order against the landlord in the amount of \$2600.00.

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: December 27, 2013

Residential Tenancy Branch

