



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MA Investments
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 to recover double the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on January 08, 2014. Canada Post tracking numbers were provided by the tenant in evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant and the tenants advocate appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on July 01, 2013. The tenancy ended on August 08, 2013. Rent for this unit was \$870.00 per month in total and each tenant was to pay half the rent each. Rent was due on the first day of each month in advance. There were two named tenants on the tenancy agreement each tenant paid a security deposit of \$217.50.00 on July 01, 2013.

The tenant testifies that he gave the landlord Notice to end the tenancy. The co- tenant has continued with the tenancy and therefore the landlord should have returned this tenant's security deposit and sought to obtain the extra security deposit from the new tenant when they entered into a new agreement. The tenants advocate testifies that the landlord was sent two letters one from the tenant on August 20, 2013 and one from the tenants advocate on September 18, 2013. Both letters contained a forwarding address for the tenant. A copy of these letters has been provided in documentary evidence.

The tenants advocate testifies that the landlord has failed to return the security deposit within 15 days of receiving the tenants forwarding address in writing. The tenant testifies that he has never given the landlord written permission to keep all or part of the security deposit.

There is no further monetary award sought for money owed or compensation for damage or loss.

Analysis

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all

tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

I am satisfied from the undisputed testimony heard today that this tenant did give notice to the landlord to end the tenancy. The other co-tenant has continued to reside in the rental unit and therefore is considered to have entered into a new tenancy agreement with the landlord. The landlord is therefore responsible to return the security deposit to the tenants prior to entering into a new agreement. The tenant has testified that although the security deposit was \$435.00 the tenant only seeks to recover his share paid of \$217.50 as the co-tenant would have used his share for the new security deposit when the tenancy continued.

Consequently I refer the parties to s. 38(1) of the *Act* which 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.

I find this tenancy ended on August 08, 2013 and a forwarding address was first provided to the landlord on August 20, 2013. As a result, the landlord had until September 04, 2014 to return this tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double his portion of the security deposit. I have issued a Monetary Order to the tenant for an amount of **\$435.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

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 **\$435.00**. 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: March 13, 2014

Residential Tenancy Branch

