



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's/Applicant's (the Applicant's) application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double the value of the \$500.00 security deposit paid by her and one of the co-tenants (EY) pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. In late October 2013, the tenants notified the landlords of their intention to end this tenancy by November 30, 2013. The landlord identified as the Respondent in this application (the landlord) confirmed that she was handed a copy of the Applicant's dispute resolution hearing package and written evidence on January 3, 2014. I am satisfied that the Applicant served the landlord with a copy of her dispute resolution hearing package and written evidence package in accordance with the *Act*.

The landlord said that she attempted to serve the Applicant with her written evidence package, including 32 colour photographs by sending it to her by courier. The Applicant did not accept delivery of this package. As the landlord did not serve the Applicant with a copy of her written evidence in a way authorized by section 88 of the *Act*, I have not considered the landlord's written evidence package.

Issues(s) to be Decided

Does the Applicant have standing to make this application? If so, is the Applicant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the Applicant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This fixed term tenancy commenced on November 1, 2012. At the expiration of the initial term on April 30, 2013, the tenancy continued as a periodic tenancy until

November 30, 2013, when this tenancy ended. Monthly rent for this three bedroom rental unit was set at \$1,500.00, payable in advance on the first of each month, plus utilities. Each of the three tenants paid a \$250.00 security deposit to the landlords.

The landlord testified that there was a joint move-in condition inspection. The Applicant denied that any such inspection occurred. Both parties agreed that no move-in condition inspection report was written. No joint move-out condition inspection was conducted at the end of this tenancy.

At the end of the tenancy, the third tenant, who did not attend this hearing (Tenant EJ), cleaned the rental unit. The other landlord met with her and returned her \$250.00 security deposit. The landlords retained the security deposits of \$250.00 each paid by the other two tenants, including the Applicant in this hearing. The landlord maintained that there was considerable cleaning that had to be conducted at the end of this tenancy.

The Applicant testified that she gave the other landlord (JM) the tenants' forwarding address in writing on the last day of their tenancy when they returned their keys on or about November 26, 2013.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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." As there is no evidence that the tenant(s) have given the landlords written authorization at the end of this tenancy to retain any portion of the security deposit, section 38(4)(a) of the *Act* does not apply to the security deposit for this tenancy.

During the hearing, the landlord noted that she considered NJ, the person who received a return of her \$250.00 security deposit from the landlord, as the “point person” for the purposes of this tenancy. She noted that the Residential Tenancy Agreement (the Agreement) contained only NJ's name and was only signed by NJ. She asked for a determination as to whether the correct applicant had filed this application for dispute resolution, as the Applicant had not signed any documents to include her as a tenant in this Agreement.

At the hearing, I noted that the Agreement, a copy of which was provided by the Applicant, was between the two landlords and NJ “And Others, see Addendum.” The Addendum, also entered into written evidence by the Applicant, identified the Applicant and EY, as “Additional names as ‘co-tenants’ with NJ, point person.” However, neither the Applicant nor the other co-tenant signed either the Agreement nor the Addendum. They gave undisputed sworn testimony supported by written evidence that they did pay separate \$250.00 security deposits to the landlord. In emails from the other landlord to the Applicant and EY, it was clear that the landlords’ reason for refusing to return the remaining \$500.00 in security deposits for this tenancy did not involve a claim that the Applicant and EY did not have standing in this matter.

Under these circumstances and after a study of the Agreement, the written evidence and the sworn testimony, I find that there was both a signed Agreement between the landlords and Tenant NJ, as well as what would appear to be an oral agreement between the landlords and the Applicant and EY. This oral agreement is supported by some written corroborating evidence in the form of the wording of the Agreement and the Addendum. While no signed written agreement existed between the landlords, the Applicant and EY, there is little question that the landlords did accept separate security deposit payments from each of the three tenants. The landlords also treated the circumstances of Tenant NJ, who helped with the cleaning of the rental unit and her bedroom, with respect to her security deposit differently than the Applicant and EY. However, some of the emails from the Applicant and EY also reveal that they were leaving the cleanup of the rental premises to Tenant NJ, who signed the Agreement. Tenant NJ became responsible for any rights and responsibilities that flowed from being the only signatory to the Agreement.

While there may very well have been an oral agreement in place between the Applicant, EY and the landlords, the nature of this agreement is somewhat confusing, given the statement in the Addendum that Tenant NJ was to act as the “point person” between the tenants and the landlords. Was this role limited to communication between the parties with respect to the payment of rent, requested repairs, inspections or complaints or did it extend to more formal issues such as the cleanup of the rental premises at the

end of this tenancy? This role as “point person” was distinguished in writing to the extent that the actual Agreement, the only signed document relating to this tenancy, named only Tenant NJ as the tenant, both at the beginning and end of this Agreement. Under these circumstances, I find that the oral agreement was non-binding as the best and most reliable evidence of the contract is the signed Residential Tenancy Agreement. In this case, I find that the only person legally liable for the responsibilities attached to being a tenant in this tenancy was Tenant NJ, the person specifically named in the Agreement and who signed the Agreement as the tenant.

Since Tenant NJ was the sole signatory to the Agreement as the tenant, she carries both the responsibilities and rights of a tenant for this tenancy. In other words, any claim that the landlords might make could only be directed at the person who signed the Agreement with them, Tenant NJ. As the Applicant and EY had no direct contractual Agreement with the landlords and this tenancy was under Tenant NJ’s name, the Applicant and EY can neither be held responsible for damage arising out of this tenancy, nor can they be enriched by the landlords’ failure to abide by the terms of the Agreement between the landlords and Tenant NJ.

Any request for a return of the security deposit paid for this tenancy would need to be made by the legal tenant in this Agreement, Tenant NJ. Any rights that the Applicant and EY may have to obtain a return of their portion of the security deposit would need to be directed to Tenant NJ, due to their failure to sign any written agreement with the landlords. Although this may appear to be a somewhat narrow interpretation of the contractual obligations of the parties in this matter, I find that this approach is consistent with the Applicant’s and EY’s apparent decision to leave the cleaning of the rental unit to the assigned “point person,” Tenant NJ, at the end of this tenancy. Tenant NJ would have more interest in ensuring that the rental unit was properly cleaned at the end of this tenancy as she apparently realized that she was responsible for the condition of the rental unit as the sole signatory to this Agreement.

For the reasons outlined above, I find that the Applicant has no legal standing to make a claim against the landlord/ Respondent. As such, I dismiss her application without leave to reapply. Any action she or EY may have would need to be pursued by Tenant NJ, the tenant in this Agreement, on their behalf. The Act only provides remedies for disputes involving landlords and tenants; it does not apply to disputes between tenants.

I also note that EY was neither an applicant in this matter, nor is she a tenant under the Agreement. While this application for dispute resolution sought a return of double her security deposit, this could not have been possible as she was not a co-applicant in these proceedings.

Conclusion

I dismiss this application for dispute resolution without leave to reapply.

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: April 15, 2014

Residential Tenancy Branch

