



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, O, FF

Introduction

In the first application, by filing number, the tenant seeks to recover an \$850.00 security deposit doubled pursuant to s.38 of the *Residential Tenancy Act* (the “Act”).

In the second application the applicant Ms. L. seeks a monetary award for unpaid rent and damages for cleaning and repair.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either side is entitled to any award?

Background and Evidence

The rental unit is a two bedroom condominium apartment.

The applicant tenant Ms. W.’s tenancy started in April 2009 with a co-tenant who left in March 2010. The original tenancy was for one year at a monthly rent of \$1730.00. The landlord shown in the written tenancy agreement was Mr. P.L. though most all interactions were with his wife Ms. K.L. It appears that the respondent P.Z. is the owner of the condominium unit.

The tenants paid an \$850.00 security deposit at that time.

After Ms. W.’s cotenant left, she “sublet” a room to a Mr. S.S. from whom she took a security deposit of \$425.00.

In January 2014, Ms. W. gave notice to end the tenancy effective February 28, 2014.

By the end of February Mr. S.S. had decided to stay on. He found himself a co-tenant, Mr. G.A. and together they signed a tenancy agreement with the owner Mr. P.Z. commencing March 1, 2014 at a rent of \$1730.00.

The new tenancy agreement called for a security deposit of \$850.00. At the same time, Ms. W.'s landlord (the agent for the owner) was responsible to account to her for her \$850.00 deposit and Ms. W. was responsible to account to Mr. S.S. for his \$425.00 deposit (plus some incidental adjustments).

At a meeting with all the parties, including Mr. S.S., it was agreed that the landlord would simply keep Ms. W.'s \$850.00 deposit as Mr. S.S.'s required deposit and that Mr. S.S. would account to Ms. W. for her deposit after adjustment for the deposit she was holding from him and the incidental adjustments between them.

Ms. W. vacated by February 28, 2014 and commenced correspondence with Mr. S.S. regarding the accounting of money he owed her under the arrangement.

Mr. S.S. had refused to pay Ms. W.. She now seeks return of her original deposit from her landlord Mr. P.L., his wife Ms. K.L. and the owner P.Z.

Mr. S.S. and his new co-tenant took possession of the rental unit and resided there for about a year. They left apparently owing their landlord P.Z. some rent money and without properly cleaning or repairing the rental unit. Ms. K. L, assumedly on behalf of P.Z. seeks to recover that rent and damages from Ms. W.

Analysis

The evidence shows and I find that Ms. W. and her "subtenant" Mr. S.S. had an agreement with their landlord that Ms. W.'s security deposit would be kept by the landlord to be used as Mr. S.S.'s security deposit.

Under s. 38(4)(a) of the *Act* a landlord may retain an amount from a security deposit or a pet damage 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.

I find that there was an agreement for the landlord to keep Ms. W.'s deposit.

In an email to Mr. S.S. dated March 29, 2014, Ms. W. wrote,

We ALL agreed at the final meeting on Feb. 27 that **you** would pay me my \$425.00 security deposit rather than taking it out of the Landlords' account: that would remain as is.

The \$425.00 referred to was Ms. W.'s \$850.00 security deposit less the \$425.00 security deposit Mr. S.S. had paid her when he moved in with her.

In an email to Ms. K.L. dated March 30, 2014, Ms. W. wrote that Mr. S.S. "appears to not be upholding his agreement to pay my damage deposit back in full ..."

The *Electronic Transactions Act*, S.B.C. 2001, c. 10, s. 5, provides:

Requirement for a record to be in writing

5 A requirement under law that a record be in writing is satisfied if the record is

(a) in electronic form, and

(b) accessible in a manner usable for subsequent reference.

This means that emails, which are a record in electronic form, may satisfy the "in writing" requirement of s. 38(4)(a), above.

I find that the emails form an "in writing" record of the agreement and that the tenant Ms. W. has agreed in writing that the landlord could keep her security deposit. She is therefore not entitled to claim it from the landlord. She must recover it from Mr. S.S.

In regard to the landlord's claim for rent, clearly it is Messrs. S.S. and G.A. who owe it. Ms. W. has no contractual obligation with the landlord anymore.

Similarly, in regard to the state of the premises after Mr. S.S. and Mr. G.A. moved, that is a matter of no concern to Ms. W. The landlord cannot claim against her for that.

There is the question of a hole in the wall that may have been created during Ms. W.'s tenancy. I find that the evidence is inconclusive in that regard. Ms. W.'s landlord failed to carry out a move-out inspection or prepare a report when she left and she says the hole, which she admits was created during her tenancy, had been repaired. I dismiss this item of the claim.

Conclusion

The tenant's application is dismissed.

The landlords' application is dismissed.

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: May 14, 2015

Residential Tenancy Branch

