



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of the security and pet deposits, to cancel a 1 month Notice ending tenancy for cause and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant confirmed that a Notice ending tenancy is not in dispute.

The tenant received the landlord's evidence the day prior to the hearing. The tenant was prepared to refer to that evidence.

Issue(s) to be Decided

Is the tenant entitled to return of the security and pet deposits paid?

Background and Evidence

There was no dispute that a tenancy agreement was signed by the landlord and tenant T.G. on November 20, 2014. The tenancy commenced on December 1, 2014. Security and pet deposits in the sum of \$400.00 and \$350.00 respectively were paid. A copy of the tenancy agreement was supplied as evidence.

There was no dispute that the applicant lived with the person who signed the tenancy agreement. She made the occasional rent payment. The applicant was not present

when the move in condition inspection report was completed and did not sign that report or the tenancy agreement.

From December 2014 to February 2015 rent had been paid by post-dated cheques which the landlord said were issued by T.G. The applicant said her name on was on those cheques; the landlord said it was not.

There was no dispute that T.G. paid March 2015 rent in cash and that the applicant paid April 2015 rent in cash.

The landlord said that all matters related to the tenancy were between him and T.G. The landlord was aware that the applicant was living in the unit.

Text messages supplied as evidence show that a message was sent to the landlord at the end of March 2015 indicating T.G. did not realize the chequing account would be required for April's rent payment. The applicant then paid April rent in cash. The landlord said he was not at home when that rent was paid. On April 8, 2015 the applicant sent a message saying she would to schedule an inspection as she would be moving out April 28, 2015.

The applicant and landlord met to complete a move-out inspection report. T.G. was not present. The landlord said that the applicant told him she did not know where T.G. was and that he had vacated the month prior. The landlord said that he had not previously been informed that T.G. had vacated. The applicant did not sign the move-out inspection report. The applicant said she left a forwarding address with the landlord at this time; the landlord said she did not.

There was no dispute that on May 21, 2015 the tenant sent the landlord an address identified as T.G.'s address. The applicant has testified that she has no knowledge of T.G.'s whereabouts and that he is not aware this application for dispute resolution made on May 26, 2015 has been made.

Analysis

I have considered the status of the applicant, to determine if she is a tenant or occupant.

Residential Tenancy Branch policy defines an occupant as:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

The applicant did not sign the tenancy agreement. She lived in the rental unit and may well have had her name on cheques used for rent payment. However, I find that the landlord intended to rent the unit to T.G. The landlord signed the tenancy agreement with T.G. and completed the move-in inspection report with T.G. This all points to what I find was a tenancy agreement made with T.G. only.

When the applicant sent the landlord a message saying she would move out I find the landlord was not aware that T.G. had vacated. There was no evidence before me that T.G. ended the tenancy prior to the time the landlord obtained possession of the unit.

The landlord has used the address supplied by the applicant to submit an application for dispute resolution naming T.G. only. I find that this supports the landlord's submission that he did not accept the applicant as a tenant, but as an occupant only.

Therefore, from the evidence before me I find, on the balance of probabilities, that the applicant was not a co-tenant, but an occupant.

Further, there was no evidence before me that the applicant is acting as agent for the tenant. The tenant is not aware the application has been made.

Therefore, as the applicant is an occupant I dismiss the application.

Conclusion

The application is dismissed.

This decision is final and binding and 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: July 17, 2015

Residential Tenancy Branch

