Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF

Introduction

The tenant applies to recover the remainder of a $900.00 security deposit and for compensation alleged to have been promised for cleaning the premises on a number of occasions prior to real estate showings.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to any of the relief requested?

Background and Evidence

The rental unit is a four bedroom house. The application tenant and three other men took occupancy in October 2013 for a one year term and then month to month.

There is a written tenancy agreement showing the four men as tenants. Only the landlord, the applicant tenant and one other appear to have signed the agreement. The parties at this hearing agreed that all four men were the tenants.

The monthly rent was $1800.00, due on the first of each month, in advance. It appears that the landlord and tenants reached an arrangement for rent to be paid in halves, on the first and fifteenth of each month. It was the tenants' habit that each paid one quarter of the rent directly to the landlord.

The landlord received a $900.00 security deposit. It was paid by all four occupants; one quarter each.

The tenancy ended on March 15, 2015.

The tenant testifies and the landlord agrees that the tenant provided his forwarding address to the landlord by an email sent April 30, 2015.

The tenant says that in early March 2015 he texted the landlord authorizing her to keep $225.00, “his portion,” of the $900.00 security deposit, to be applied toward his one quarter share of the last half month’s rent. The landlord says she reluctantly did so.

In mid-April, after the tenants left, the landlord unilaterally calculated that she was owed $63.00 for carpet cleaning and $150.00 for garbage removal (a total of $213.00). She then proceeded to subtract the amount of $313.00 from the $675.00 of deposit money she still had and sent the other three tenants their $120.67 one third share of the remainder by bank transfer through email addresses she had been provided.

The tenant says that the others have refused the money transfers.

The landlord expresses concern that only this tenant has applied to recover the deposit money.

The tenant says there was no move-in or move-out inspection conducted by the landlord, nor any reports prepared and so, by operation of s.24 of the *Residential Tenancy Act* (the “*Act*”) the landlord has lost her right to keep the remainder of the deposit money.

The tenant says that during the tenancy the landlord had the property listed for sale and that there was an agreement that the tenants would be paid $25.00 for cleaning up the house prior to each showing. He says there were twelve showings and so the tenants are owed $300.00.

The landlord says the deal was with her realtor, not her and so the tenants must seek recovery from the realtor.

Analysis

Regarding the $300.00 clean up claim, the text messages produced at hearing show that the offer came from the realtor. The landlord merely conveyed the offer. The messages show that each time the tenant raised the issue the landlord referred him to the realtor.

Though the landlord admits that she could possibly have received a benefit by having the premises clean for showings to prospective purchasers, the messages make it clear in my view that it was an offer from the realtor on her own and for the benefit of the realtor, who stood to profit from a sale of the home (the home was not sold and is no longer listed). The realtor was acting on her own behalf and not as the landlord’s agent when the offer was made and there is no indication that the cost of the cleaning would be borne by the landlord under any arrangement with the realtor.

This portion of the tenant's claim is dismissed. He must seek his compensation from the realtor.

Regarding the tenant's claim for recovery of the remainder of the deposit money, I find that he is not entitled to bring that claim on his own.

The presumption is that a contract made by two or more persons is joint, express words being necessary to make it joint and several (Glanville L Williams, *Joint Obligations*. London: Butterworth & Co. 1949). The four tenants were in a joint relationship under the tenancy agreement.

Though they dealt with payments of rent and the security deposit in a separate or several manner, in my view that did not change the joint relationship. Each remained responsible to pay the entire rent. Each retained a full interest in the deposit money, though between them they might have a right to a particular division of it amongst themselves.

Any one of the four, on behalf of the others, could have authorized the landlord to retain all or a portion of the deposit money.

On the other side of the coin, the landlord owed the deposit money to all four tenants. Though she might have chosen to send each a quarter, that would have been done with their implied agreement because that is how the tenants paid it and would have divided it had one been paid the entire deposit money.

The tenant in this case is in the position of a "joint promisee." He one of four persons entitled to enforce the landlord's single obligation (or "promise"); to return the deposit money. There are no "express words," namely, a written tenancy agreement showing that the landlord was severally obliged to pay any individual tenant any amount.

The *Act* does not provide for this circumstance.

Under the common law as it applies to such obligations and which Residential Tenancy arbitrators are required to apply (s. 91 of the *Act*), one joint promisee cannot sue on the promise without joining the other promisees (*Milliken* v. *Young*, [1929] 1 W.W.R. 213 (Sask. C.A.).

There does not appear to be more current law on the subject in British Columbia and I assume that is because this common law principle has been restated in the B.C. Supreme Court Rules, currently Rule 22-5(3)

> (3)Subject to any enactment or these Supreme Court Civil Rules or unless the court otherwise orders, a plaintiff or petitioner who claims relief to which any other person is jointly entitled must join as parties to the proceeding all persons so entitled, and any of

> them who do not consent to be joined as a plaintiff or petitioner must be made a defendant or respondent.

The Provincial Court Small Claims Rules do not appear to deal with the point.

This restatement in the Supreme Court Rules does not affect the applicability of the principle to other adjudicative bodies applying common law, such as the Residential Tenancy Branch.

It follows that for jointly entitled tenants to claim against a landlord for recovery of a security deposit, all tenants must be joined as parties.

The tenant's application to recover the deposit money is therefore dismissed. He is free to re-apply, and I grant him any leave necessary to do so, but any reapplication must be in accord with the common law rule stated above.

Conclusion

The tenant's application is dismissed with leave as set out above.

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: July 15, 2015

Residential Tenancy Branch