



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This was a hearing with respect to an application by the tenant. The tenant applied for a monetary award including the return of her security deposit. The application was filed on February 6, 2015. The landlord was served with the application and Notice of Hearing by registered mail. At the hearing the landlord acknowledged receipt of the application and the tenant's documents.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Vancouver. The tenant rented the unit with a co-tenant, J.M. I was not provided with a copy of a tenancy agreement. The monthly rent was \$1,000.00 and the tenants paid the landlord a security deposit of \$500.00. The co-tenants separately paid \$250.00 each to the landlord towards the security deposit. The documents submitted by the tenant suggest that the tenancy began sometime in 2012.

The tenant testified that during the tenancy the rental unit became infested with bedbugs. The tenant submitted copies of e-mails exchanged in October, 2012 reporting the presence of bedbugs to the landlord. The tenant complained that the landlord insisted that the tenants pay for a portion of the costs of treating the bedbug problem. She claimed the sum of \$150.00 that she paid on account of the bedbug treatment in 2012.

The tenant gave the landlord a notice by e-mail that she intended to move out of the rental unit: "on or before March 1, 2014". The landlord responded by e-mail; he said "Accepted!!!". The tenant moved out at the end of February, but the co-tenant continued to occupy the rental unit. Despite the tenant's Notice to End Tenancy, the landlord did not conduct a move out inspection and did not formalize any new tenancy agreement with J.M. who remained as the sole tenant after March 1st. After she moved out the tenant requested that the landlord return her portion of the security deposit. The landlord asserted that the tenant had broken the crisper drawer in the

refrigerator and said that the tenant should pay for it. In a March 6th, 2014 e-mail to the tenant he said:

Another thing is that the damage deposit was for occupancy of the suite, not partial occupancy of the suite. If you would like your portion of the damage deposit back, you should take it up with your former room mate (name) because she is still occupying the suite.

The tenant responded; she said that the broken crisper was cracked when the tenancy began and finally gave out. She said it constituted normal wear and tear. The tenant said that she paid her rent and deposit separately to the landlord during the tenancy and it was the landlord's obligation to return the security deposit to her. The former roommate was not the one who should return the deposit.

By letter dated March 12, 2014 sent to the landlord by registered mail, the tenant provided her forwarding address and requested the return of her security deposit of \$250.00. The landlord did not respond to the letter.

At the hearing the landlord testified that the tenant's roommate, J.M. continued to occupy the unit and paid rent to the landlord until she was hospitalized. She has now died. The landlord said that there was damage to the rental unit and he came to some form of resolution about the damage and the security deposit with the roommate's next of kin.

Analysis

Residential Tenancy Policy Guideline No. 13 addresses the rights and responsibilities of co-tenants. It contains the following provision:

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.

The evidence before me established that the tenant gave the landlord proper notice to end the tenancy and she moved out pursuant to that notice at the end of February, 2014. The landlord explicitly accepted her notice to end the tenancy as recorded in his reply e-mail to the tenant. The co-tenant did not move out and I find that the landlord accepted her as the sole tenant and by so doing, entered into a new tenancy agreement with the co-tenant, J.M.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenants provided the landlord with her forwarding address in writing by letter dated March 12, 2014, and based upon the acknowledgement of the landlord at the hearing I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$500.00.

I do not allow the tenants claim for reimbursement of an amount said to be paid for bedbug treatments; during the tenancy she agreed to pay that amount. She may not make an agreement to pay the amount and wait for several years until after the tenancy has ended to change her position and claim back the amount paid; this portion of the tenant's claim is dismissed without leave to reapply.

Conclusion

The tenant did not pay a fee for her application and I do not award any costs with respect to making the application. I grant the tenant a monetary order against the landlord in the amount of \$500.00. This order may be registered in the Small Claims Court and enforced 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: August 27, 2015

Residential Tenancy Branch

