



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenants by mailing, by registered mail to where the landlords reside on April 23, 2015. The tenant testified she conducted a search of the Canada Post tracking service and it indicated the package was accepted for service by the landlords on April 24, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on April 12, 2014 and end on April 15, 2015. The rent was \$2100 per month payable in advance on 12th day of each month. The tenant(s) paid a security deposit of \$1500 on March 15, 2014.

The tenancy ended on April 15, 2015.

The tenant(s) provided the landlord with his/her forwarding address in writing on March 26, 2015.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenant paid a security deposit of \$1500 on March 12, 2015. The landlords demanded a security deposit which was more than permitted by the Residential Tenancy Act. I determined the tenancy ended on April 15, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on March 26, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit or \$3000 ($\$1500 \times 2 = \3000).

At the time the tenancy started there was no tenant in the basement and the applicant was required to put the gas and hydro in her name. In September 2014 the landlord rented the basement suite to another tenant. The agreement between the parties was that the applicant would pay 2/3 of the Hydro and Gas and the downstairs tenant was to pay 1/3. The downstairs tenant failed to pay her share of the Hydro and Gas. Policy Guideline #1 includes the following statement:

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SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable⁵ as defined in the Regulations.

2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different

tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I determined the applicant has established a claim against the landlord for 1/3 share of the hydro and gas bill that was not paid by the downstairs tenant to April 15, 2015. The landlord demanded the tenant put the utilities in her name. There was an agreement between the applicant, the landlord and downstairs tenant that the downstairs tenant would pay the applicant 1/3 of the utilities. The downstairs tenant failed to make the required payments. In such a situation the landlord is responsible as set out in Policy Guideline #1. I determined the sum of \$326.87 for hydro and \$305 for Fortis Gas is owed as the 1/3 share of the downstairs tenant and the applicant is entitled to recover this sum from the landlord. .

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$3618 plus the sum of \$50 in respect of the filing fee for a total of \$3668.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: September 25, 2015

Residential Tenancy Branch

