



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MND, FF
For the tenants: MNSD, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The landlord applied for authority to retain the tenants' security deposit, a monetary order for alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The tenants applied for a return of their security deposit, doubled, and for recovery of the filing fee paid for this application.

Both landlord and the tenants' agent attended the telephone conference call hearing.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

As to the landlord's application filed on May 13, 2015, he listed a monetary claim of \$1200.00; however, the application did not provide a detailed or any calculation of the claim. In addition, the landlord did not submit documentary or photographic evidence with his application, and no evidence at all until September 22, 2015.

Additionally, the landlord's application listed only tenants "CR" and "KH", and not all the parties listed on the tenants' application.

The landlord was informed that I refuse to hear the his application, pursuant to section 59 (5)(c) of the Act, because his application for dispute resolution did not provide sufficient particulars of his claim for compensation, as is required by section 59(2)(b) of the Act.

The landlord's application was also refused due to non-compliance with section 2.5 of the Rules, which states that the applicant must file with their application the details of any monetary claim and all evidence available to the applicants at the time the application is filed. This section contemplates that the application and all evidence is served on the other party in a single package.

I find that proceeding with the landlord's monetary claim at this hearing would be prejudicial and procedurally unfair to the respondents, as the absence of particulars or evidence makes it difficult, if not impossible, for the respondent to adequately prepare a timely response to the claim.

The landlord is at liberty to re-apply for his monetary claim as a result, but is reminded to include full particulars of his monetary claim when submitting his application and is encouraged to use the "Monetary Worksheet" form (form RTB-37) located on the Residential Tenancy Branch website; www.rto.gov.bc.ca.

I make no findings on the merit of the landlord's application for dispute resolution. Leave to reapply is not an extension of any applicable limitation period.

The hearing proceeded on the tenants' application for dispute resolution.

Issue(s) to be Decided

Are the tenants entitled to a return of the balance of their security deposit, doubled, and for recovery of the filing fee paid for this application?

Background and Evidence

I heard undisputed evidence that a tenancy began on May 1, 2014 between the landlord and three of the listed tenants here, "KH", "LN", and "EB" and another unnamed tenant for the purposes of these applications, "HRD". The 4 original tenants were university students in the shared accommodations, allowed other occupants to live in the rental unit during the summer, and the tenants began occupancy in the rental unit for the fall term, in September 2014. The rental unit had 4 bedrooms and each tenant had their own bedroom.

A written tenancy agreement was not provided into evidence by either of the parties; however, the parties agreed that the tenancy was for a one year, fixed term, requiring the tenants to vacate on or by April 30, 2015, as was the case here.

I also heard evidence that the monthly rent was \$2400.00 and that a security deposit totalling \$1200.00 was collected by the landlord. The evidence showed further that each of the 4 original tenants paid monthly rent of \$600.00 separately to the landlord and that each of the original tenants paid a portion of the total security deposit, or \$300.00 each.

The landlord submitted HRD approached him about vacating the rental unit, to which he agreed, and that in December 2014, HRD paid her portion of the monthly rent, but vacated the rental unit that month. The landlord confirmed returning HRD's security deposit.

According to the undisputed evidence, tenant CR moved into the rental unit in January 2015, that he paid a separate security deposit of \$300.00 to the landlord, and that he paid his portion of the total monthly rent, or \$600.00 directly to the landlord.

At the end of the tenancy, the landlord returned a portion of their separate security deposits to each of the separate tenants, KH, LN, EB and CR.

As to the tenants' application, the listed monetary claim was \$1730.00, comprised of double the security deposit of \$1200.00, doubled to \$2400.00, less the total security deposit returned to each of the tenants, or \$670.00.

The tenants' agent submitted that the 4 original tenants were co-tenants, and that tenant HRD was responsible to pay rent until the end of the fixed term. HRD, according

to the tenants' agent, found a replacement to fulfill her part of the tenancy agreement, and that her replacement, in this case, CR was a sub-tenant.

The tenants' agent submitted further that the landlord extinguished his rights to the tenants' security deposit due to a lack of a condition inspection report, and that the landlord was provided with the tenants' written forwarding address in a letter dated May 27, 2015.

Analysis

In the case before me as to the tenants' application, the tenants' agent presented that the 4 original tenants were co-tenants, equally and jointly responsible for and entitled to the requirements of the tenancy agreement and under the Act. As such, the tenants are jointly and equally entitled to the total security deposit returned, and that this amount should be doubled.

In considering the request of the tenants, I must decide whether or not the tenants are co-tenants, as argued by the tenants' agent, or were tenants in common.

Residential Tenancy Branch Policy Guideline 13 states that tenants in common share the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

In considering the evidence presented, I find that the original tenants were tenants in common and not co-tenants. The undisputed evidence showed that each of the four tenants paid monthly rent and their security deposit separately to the landlord and that when one tenant vacated during the tenancy, another tenant moved into the rental unit, again paying his portion of the monthly rent and security deposit directly to the landlord. Additionally, I relied upon the fact that the landlord returned a portion of each of the tenants' security deposits to the separate tenants.

I do not accept the tenants' agent's position that CR was a sub-tenant, as a sub-tenancy is for a shorter period of time than the original tenancy and the tenants have vacated the rental unit, allowing the sub-tenant to occupy the rental unit.

Due to the above, as I have found that the applicants/tenants were tenants in common and not co-tenants, I find that their application should not have been made jointly, but

instead severally, meaning that each listed tenant must bring their own application for a return of their individual security deposit.

I therefore dismiss the tenants' application as it was made jointly as I have found that they were no co-tenants. Each of the listed tenants/applicants is at liberty to file their own separate application, however, claiming a return of their separate security deposits, in this case, \$300.00 each.

Conclusion

The landlord's application is declined, due to a lack of particulars in his application, as described above.

The tenants' joint application is dismissed, and each tenant is granted liberty to file individual claims against the landlord for a return of their separate security deposits.

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: November 1, 2015

Residential Tenancy Branch

