



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended and were given a full opportunity to make submissions with respect to the tenants' application. On behalf of the tenants, two occupants and the signees of the rental agreement were present. All parties acknowledge receipt of each other's documents submitted for this hearing, application and subsequent evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return a portion of the first month's rent for this tenancy? Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The landlord testified that this tenancy began on August 23, 2015 for a one year fixed term. The tenancy agreement, submitted as evidence in this hearing, includes four signatories to the tenancy agreement: tenant KW, tenant SS, tenant RO and tenant MM. The tenancy agreement lists four further tenants who would occupy the rental unit. Two of the tenants who were listed to occupy the unit and their respective parents are the applicants for this dispute resolution matter. These two tenants (tenant BO and tenant AM) did not take occupancy in the rental unit. The two other tenants listed as occupants (tenant JS and tenant LJ) occupied the rental unit from August 23, 2015 to December 31, 2015. Tenant AM and tenant BO as well as their parents, tenant RO and tenant MM seek to recover \$1067.00 from the landlord.

The tenancy agreement indicated a monthly rent in the amount of \$1,600.00 payable on the first of each month. The tenants collectively paid a security deposit of \$800.00 to the landlord prior to August 23, 2015 through tenant JS. The landlord provided undisputed

testimony and supporting evidence that she returned this deposit to tenant JS when the tenant JS and tenant LJ vacated the rental unit on or about December 31, 2015.

Tenant RO (mother to tenant BO) testified that she contacted the landlord on August 21, 2015 (11 days prior to the start of the tenancy) and advised the landlord that she was not comfortable with tenant BO moving in to the rental unit. Tenant MM provided brief testimony that Tenant RO advised the landlord that his daughter, tenant AM was also not comfortable moving in to the rental unit. Both Tenant RO and Tenant MM confirmed that no notice or other communication regarding this tenancy was provided in writing to the landlord.

Tenant BO and tenant AM both testified that there had been several changes to the agreement between themselves and their friends prior to move in. At one point, the tenants chose another property belonging to the landlord. At another point, they chose a second property. At one point, someone's girlfriend was going to move in. At one point, a certain sleeping arrangement was made. At another point, the sleeping arrangement was changed. Tenant BO and tenant AM both testified that they did not speak directly to the landlord. They both testified that they provided their portion of the rent and security deposit for this tenancy to one of their co-tenants to pay to the landlord on their behalf. Tenant RO testified that she wasn't comfortable signing after considering the tenancy however Tenant RO, Tenant MM, Tenant SS and Tenant KW (the parents) signed the residential tenancy agreement on August 18, 2015.

This tenancy was the subject of a previous dispute resolution hearing where the landlord applied to end the tenancy. The landlord; tenant KW; tenant SS; tenant JS; and an agent for tenant LJ attended the hearing while tenant MM, AM and BO were not present for the hearing. Tenant RO attended the previous dispute resolution hearing. As a result of the settlement agreement on December 24, 2015, an order was made by an Arbitrator of the Residential Tenancy Branch that the tenancy would end December 31, 2015.

For clarity, I provide the details of settlement at the prior residential tenancy hearing;

1. *All parties agreed that this tenancy will end by 1:00 p.m. on December 31, 2015, by which time tenant JS, tenant LJ and any other occupants will have vacated the rental unit;*
2. *The landlord agreed not to pursue any future loss of rent from January 1, 2016 until August 22, 2016, against all tenants arising out of the fixed term tenancy agreement;*
3. *The landlord agreed not to pursue any past loss of rent from August 23, 2015 to December 31, 2015, against all tenants arising out of the fixed term tenancy agreement, despite the fact that all present parties disagreed about the amount of monthly rent due under the tenancy agreement;*

4. *The landlord agreed that for the purposes of this settlement agreement, all rent has been paid in full under this tenancy agreement, until December 31, 2015;*
5. *All parties agreed that this settlement agreement does not prejudice the future application, filed by tenant RO and tenant MM against the landlord, and that application and hearing will proceed as scheduled on May 20, 2016 at 1:30 p.m., the file number of which appears on the front page of this decision; and*
6. *All parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's Application at this hearing and any issues arising out of this dispute.*

At this hearing, the tenant/applicants have applied to recover a portion of the first month's rent as well as a portion of the initial security deposit paid for this tenancy. The applicant/tenants sought \$1067.00 including:

- \$400.00 September rent for ¼ of the first month's rent by Tenant BO;
- \$400.00 September rent for ¼ of the first month's rent by Tenant AM;
- \$267.00 a portion of the security deposit paid by Tenant AM.

The landlord provided undisputed testimony that she did not enter into a new tenancy agreement with the individuals who resided in the rental unit from August 23, 2015 to December 31, 2015. She testified that there was ongoing confusion as to who would reside in the unit and even which property the tenants would chose to reside in. The landlord testified that the security deposit was returned to the tenants who resided in the rental unit and requested the return of the security deposit at the end of the tenancy. She submitted that she relies on section 16 (start of the rights and obligations under a tenancy agreement) and section 52 (form and content of notice to end tenancy) of the *Act* claiming that the applicant/tenants provided no proper notice and that they are obliged as tenants with respect to this tenancy. She further submitted that these parties constituted co-tenants and are therefore jointly and severally liable with respect to this tenancy.

Analysis

Both parties provided substantial amounts of information regarding the events relating to this tenancy including but not limited to; decision to move in together; decision to change the number of tenants in the rental unit; decision to change the individuals who would reside in the unit; what unit would best suit the tenants; as well as communication to the landlord. However, Tenants MM, RO, SS, KW (the parents of the minor tenants who intended to reside in this rental unit) signed the residential tenancy agreement on August 18, 2015 and provided money towards the security deposit and first month's rent prior to viewing the unit themselves. A tenant is defined in the *Act* and Residential Tenancy Policy Guideline No 13: "[a] tenant is a person who has signed a tenancy agreement to rent residential premises". MM, RO, SS and KW were tenants for the purposes of this residential tenancy agreement.

The landlord testified that she acknowledges her obligation to comply with the *Act*. She submitted that the tenants also have obligations under the and she referred to section 16 of the *Act* which states,

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, **whether or not the tenant ever occupies the rental unit.**

[emphasis added]

The landlord testified that she relied on the tenancy agreement signed on August 18, 2015 and that she complied with her obligations under the *Act*. She testified that she was not given proper notice in compliance with section 45 and section 52 of the *Act* that require, among other conditions, that a tenant must give written notice to end a fixed term tenancy that is effective not earlier than one month after the notice is received by the landlord and that is not earlier than the fixed term tenancy end date in the residential tenancy agreement.

Policy Guideline No. 13 specifies that, “[a]ny changes regarding who is a tenant should be recorded in writing”. The applicant/tenants did not submit evidence that they provided written notice or created a written record to reflect a change in the tenants/this tenancy. Tenant RO testified that she phoned the landlord on or about August 23, 2016 however given the nature of the previous communications and mind changing, I accept that landlord’s testimony that she relied on only written documentation with respect to this tenancy. I find that it is reasonable that the landlord placed her reliance on the residential tenancy agreement itself. Further, if this notice on or about August 23, 2016 were in writing, it would be very minimal notice to provide in all of the circumstances.

Policy Guideline No. 13 also defines ‘co-tenants’ and co-tenant obligations in a residential tenancy,

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. **The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.**

[emphasis added]

A co-tenant who vacates the residence prior to the end of the tenancy remains responsible for any debt or damages under the legislation. In this case, the applicant/tenants (tenant RO, tenant MM, tenant BO and tenant AM) argue that they are not a part of this tenancy (that they are not tenants). Based on all of the evidence provided, I find that tenant RO, tenant MM, tenant BO and tenant AM as well as tenant SS tenant RO tenant JS tenant LJ were all co-tenants who entered into a fixed term tenancy. Further, I find that the landlord was not provided with sufficient written notice to determine that a change to the residential tenancy agreement was required.

As quoted above from Policy Guideline No. 13, “[t]he responsibility falls to the tenants to apportion among themselves the amount owing to the landlord”. The responsibility for the apportionment of monies, rental amounts and security deposit amounts, is not the responsibility of the landlord when co-tenants rent. The landlord complied with the *Act* in maintaining the tenancy and requesting its end with a dispute resolution hearing. I accept the undisputed sworn and supported evidence of the landlord that she has returned the entirety of the security deposit to one of the tenants on request.

All of the tenants are liable, responsible and culpable for debts, costs and apportionment of their collective funds. Therefore, I find that the tenants are not entitled to compensation by the landlord for a rental amount, security deposit payment or the filing fee with respect to this application.

Conclusion

I dismiss the tenants’ application in its entirety without leave to reapply.

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: June 3, 2016

Residential Tenancy Branch