



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Background and Evidence

A written tenancy agreement was entered into and signed by the parties on January 26, 2016. A copy of the written agreement was provided on file. The tenancy began on February 1, 2016 with a monthly rent of \$1500.00 payable on the 1st day of each month. The tenancy was a joint tenancy between the tenant and another co-tenant and was for a fixed term of one year. The tenant paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

The tenant vacated the rental unit on March 21, 2016 due to a conflict with the co-tenant. The co-tenant agreed to take on the lease for the remainder of the fixed term and removing the tenant from the lease. The security deposit was carried over to the new lease between the landlord and the co-tenant. The co-tenant permitted the landlord to carry over the security deposit to the new lease.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants

forwarding address in writing. The tenant provided a forwarding address to the landlord by way of a letter dated April 12, 2016.

The landlord argues that the co-tenant agreed to take on the lease for the remaining term and entered into a new lease as the sole tenant and the security deposit was carried over to the new lease. The landlord submits that the security deposit matter is for the tenants to resolve among themselves.

Analysis

Section 38 of the 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.

This tenancy was a co-tenancy and co-tenants are jointly and severally liable and also share equal rights under the tenancy agreement. A security deposit is paid in respect to the tenancy as a whole and regardless of who paid the deposit, a tenant who is a party to the tenancy agreement has a right to the deposit. In this case, the tenant wished to end the fixed term lease and the co-tenant entered into an agreement with the landlord to assume the lease. The co-tenant authorized the landlord to carry over the security deposit to the new lease. There is no obligation under the Act for the landlord to return the security deposit to the tenant. The proper recourse for the tenant would be to file a small claims action against the co-tenant.

Conclusion

The tenant's application is dismissed 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: September 29, 2016

Residential Tenancy Branch