



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNSD, OLC, FF

Introduction

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

- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application pursuant to section 72.

The applicant and respondents attended the hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*. Both parties were given full opportunity to give affirmed testimony and present their evidence.

Preliminary Issue - Withdrawal

The applicant testified that he seeks to withdraw his application with the exception of his claim for the return of the security deposit and the recovery of the filing fee. In relation to the withdrawn portions of the applicant's claim, no further action is required and these portions of the file are closed.

Issue(s) to be Decided

Is the applicant authorized to obtain a return of all or a portion of the security deposit?

Is the applicant authorized to recover the filing fee for this application from the respondents?

Background and Evidence

There are three residential rental units located on the residential property, a three bedroom primary unit, a two bedroom secondary unit and a one bedroom coach house known as a "granny flat." On September 24, 2016, the respondents and applicant viewed the units and each party submitted their respective credit reports and applications to the property manager. The respondents sought to rent the two bedroom secondary unit while the applicant sought to rent the one bedroom granny flat.

A rental agreement was drafted by the property management company and signed by the respondents on September 26, 2016. As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2016 on a fixed term until September 30, 2017. Rent in the amount of \$2,500.00 is payable on the first of each month. The agreement specifies that rent includes the two houses at the back, and does not include the front house. The respondents remitted a security deposit in the amount of \$1,100.00 and pet deposit in the amount of \$1,100.00 to the property management company at the start of the tenancy.

In an email dated October 1, 2016, the respondents and applicant agreed that;

- the respondents are the tenants on the tenancy agreement for both the two bedroom secondary unit and one bedroom granny flat
- the applicant is to pay the respondents \$700.00 in rent which includes utilities, before the first of each month
- the applicant paid a \$350.00 security deposit and a \$550.00 pet deposit to be returned pursuant to the relevant sections of the BC Residential Tenancy Act
- the applicant has exclusive use of the granny flat
- the applicant must act in accordance with the terms and conditions of the original tenancy agreement that the respondents have with the property management company, in which the terms and conditions would apply to the applicant

In February of 2017, the parties approached the property management company and requested separate tenancy agreements. The above email was sent to the property management company at this time.

The respondents vacated the rental unit April 1, 2017. At the time of the hearing, the applicant remained in the granny flat. The applicant testified that upon the departure of the respondents, the applicant paid his April rent directly to the property management company. The applicant confirmed that at the time of the hearing he did not have a separate written tenancy agreement with the property management company.

The applicant contends that rent was \$600.00 and utilities were \$100.00. It is the applicant's position that he was only obligated to pay a security deposit and pet deposit of \$300.00 each. The applicant seeks the return of the security deposit including the \$300.00 overpayment from the respondents.

Analysis

In this case, an assessment must be done to determine whether this situation is a sublet or occupant/roommate situation.

Sublet typically refers to situations in which the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant. The term sublet can also be used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In this case, the original tenants did not move out of the rental unit nor rent out space within the unit. For these reasons, I do not consider this to be a sublet.

Upon review of the submitted evidence and reflection of the parties' testimony, I find the applicant is an occupant/roommate, with no rights or responsibilities under the *Act*. Both units were rented under one tenancy agreement which specified written consent must be obtained to sublet. The applicant was not added to the original tenancy agreement and the October 1, 2016 email does not constitute a separate tenancy agreement.

Conclusion

The applicant's application is dismissed as I have no jurisdiction over this matter.

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: May 24, 2017

Residential Tenancy Branch