



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security and pet deposits and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Did the tenant provide the landlord with his forwarding address in writing? Did the landlord return the security and pet deposits in a timely manner? Is the tenant entitled to the return of double the deposits? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

Both parties agreed to the following: The tenancy started on December 01, 2015 and ended on September 01, 2016. The monthly rent was \$1,800.00. A copy of the tenancy agreement was filed into evidence. The tenancy agreement lists the tenant (JB) and his roommate (SC) as the co-tenants of the rental unit.

Both parties agreed that the landlord received \$900.00 from the tenants as a security deposit. The landlord stated that JB paid \$300.00 and SC paid the balance. Both parties agreed that JB paid an additional \$450.00 for a pet deposit.

The tenancy ended on September 01, 2016. During and after the tenancy the parties communicated primarily by email.

The landlord stated that about six months after the tenancy ended, the rental home was demolished. The tenant did not have an address for the landlord and had not provided the landlord with a forwarding address. The tenant stated that when he found out that

he was required to give the landlord a forwarding address, on June 07, 2017, he emailed the landlord with a request for the return of the deposits and provided the landlord with his forwarding address.

At first the landlord denied having received the tenant's forwarding address by email, but agreed that she had when the tenant directed me to the pages of his evidenced that contained a copy of his email and a reply from the landlord.

After I determined that the landlord had received the forwarding address of the tenant, I asked her whether she had returned all or part of the deposits or whether she had made application for dispute resolution to retain the deposits. The landlord agreed that she had not taken either action.

The landlord stated that she could not locate SC who had paid most of the deposit and that JB had agreed to allow her to retain the pet deposit. JB agreed that his pet deposit would cover the damage to the home but stated that he agreed because the landlord threatened to take legal action against him. The tenant stated that he did not agree to allow the landlord to retain any part of the security deposit.

When the tenant had not received his deposit from the landlord he made an application for the return of the deposits. Since the landlord had moved and not given the tenant a forwarding address, the tenant made an application for substitute service and was granted leave to serve the landlord with the notice of hearing package by email.

The landlord responded to the tenant's claim by providing evidence to support her claim for damages to clean and repair the rental unit. I explained to the landlord that I was unable to address her claim because she had not made application for a monetary order.

I offered the parties the option of coming to an agreement to end their dispute during this hearing. If the parties agreed to the amount of money that would change hands, the landlord did not have to make application for dispute resolution as all matters pertaining to the dispute between these parties at this dispute rental unit address will be fully and finally settled.

The landlord reiterated that the unit was left in a damaged and dirty condition. The parties discussed the cost of cleaning and repairs and while they agreed on some aspects, they were not able to come to an agreement to fully resolve their dispute.

Analysis

Residential Tenancy Policy Guideline#13 addresses the rights and responsibilities of co-tenants. 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 anyone of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to landlord.

A security deposit or a pet deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposits.

Based on the documentary evidence, the oral testimony of both parties and *Residential Tenancy Policy Guideline#13*, I find that JB and SC were co-tenants and as such regardless of who paid the deposit, JB who is party to the tenancy agreement may apply for the return of the deposit.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant sent the landlord his forwarding address by email on June 07, 2017. By July 13, 2017, the tenant did not receive his deposits and made this application. Therefore, I find that the landlord failed to repay the deposits or make an application for dispute resolution within 15 days of the receipt of the forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security and pet deposits.

The total security deposit paid was \$900.00 and the pet deposit was \$450.00 for a total of \$1,350.00. Accordingly, the landlord must return \$2,700.00 to the tenant. Since the tenant has proven his case he is also entitled to the recovery of the filing fee of \$100.00.

In regards to the landlord's claims relating to loss that she may have suffered, I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file her own application for damages against the tenant.

Even though the tenant agreed to allow the landlord to retain the pet deposit, since the landlord indicated that she intended to make an application for damages against the

tenant, the amount of damages that the tenant is responsible will be determined during that hearing.

Overall the tenant has established a claim of \$2,800.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents double the security and pet deposits plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The responsibility falls to JB and SC to apportion this monetary award among themselves.

Conclusion

I grant the tenant a monetary order in the amount of **\$2,800.00**.

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: December 20, 2017

Residential Tenancy Branch