



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on October 1, 2015 and expired on September 30, 2016 thereafter reverting to a month-to-month tenancy which ultimately ended on November 30, 2017. Rent in the amount of \$1,275.00 per month was payable on the 1st day of each month at the beginning of the tenancy, which was raised from time-to-time, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit in the amount of \$625.00 and no pet damage deposit was collected. The rental unit is a basement suite in the landlords' home, and the landlords resided in the upper level.

A copy of the tenancy agreement has been provided as evidence for this hearing which names 2 tenants. The tenant testified that the other tenant (hereafter referred to as "the co-tenant") never moved in and the landlords were advised of that by email on April 29, 2016, and acknowledged that in other emails exchanged between the parties. Rent had also been increased twice during the tenancy and the Notices of Rent Increase were addressed only to the tenant, not to the co-tenant.

There was no move-in condition inspection report completed at the beginning of the tenancy, and the tenant and the landlords had arranged for a move-out condition inspection for December 1, 2017. When the tenant arrived, both landlords were there and were re-decorating already. The landlords had already completed the inspection and told the tenant that they wanted to deduct \$100.00 from the security deposit for cleaning. The tenant disagreed.

The landlords returned the security deposit, less the \$100.00 claim for cleaning, to the co-tenant who never resided in the rental unit, presumably because he agreed to the \$100.00 deduction for cleaning. Of course he would, meaning that by simply signing a letter, he would receive \$525.00. The landlords had no right to do that, and the tenant claims double the amount, or \$1,250.00 as well as recovery of the \$100.00 filing fee.

The first landlord (JY) testified that the landlords were not aware that the co-tenant had never moved in and didn't reside there until about 6 months after the tenancy began, but had seen him there from time-to-time. The co-tenant called the landlord and advised that the tenant had told him she was moving out, and he wanted to claim the security deposit. He attended at the landlords' home on December 5, 2017 and made a written request for the return of the security deposit with his forwarding address, and agreed in writing that the landlords could keep the \$100.00 for cleaning, and the landlords paid him the balance of \$525.00. The cheque the landlords received at the beginning of the tenancy were from the co-tenant's account as well as the first 3 month's rent.

The landlord further testified that the tenant was provided with a new tenancy agreement to sign on January 11, 2017 but the tenant declined because it was a 1 year lease. The tenant also refused to sign any new lease, even on a month-to-month basis. The landlord contacted the Residential Tenancy Branch who advised that once the fixed term of the tenancy expired it was not necessary to enter into a new written agreement because it would automatically revert to a month-to-month tenancy.

It came down to the \$100.00 that the landlords wanted to charge for cleaning, and the landlords attempted to show the tenant why, but the tenant got upset. The landlords were

painting the living room of the rental unit at that time which had nothing to do with the \$100.00.

The second landlord (KY) testified that the landlords only wanted the \$100.00 due to the condition of the property. The tenant refused to participate in the move-out condition inspection, got angry and ran out.

The co-tenant stayed in the rental unit for some time, off and on, and the landlords found out 6 months after the tenancy began that the co-tenant didn't live there.

Analysis

The *Residential Tenancy Act* states that within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must return the security deposit to the tenant or make an Application for Dispute Resolution claiming against it within that 15 day period. If the landlord does neither, the landlord must repay the tenant double the amount.

In this case, there is no dispute that the tenancy ended on November 30, 2017 and the landlords received the tenant's forwarding address in writing on November 23, 2017, and the landlords returned \$525.00 of the \$625.00 security deposit to the co-tenant on December 6, 2017.

The *Act* also states that if a tenant fails to participate in an inspection, the tenant's right to claim the security deposit is extinguished. In this case, the landlords completed the inspection at move-out before the tenant got there, and therefore I cannot find that the tenant's right has been extinguished.

I refer to Residential Tenancy Policy Guideline #13 – Rights and Responsibilities of Co-Tenants, which states, in part (underlining added):

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

I appreciate that the co-tenant, who never moved in, didn't give any notice to end the tenancy, however the landlords knew full well a year and a half prior to the end of the tenancy that he never moved in, and he did not continue to pay rent. The tenant continued to pay rent for a year and a half after the landlords were made aware, and for long after the tenancy reverted to a month-to-month tenancy. I also find that the landlords treated it as a new tenancy after the end of the fixed term or sooner, and knew a new tenancy had been created by virtue of collecting rent from one tenant only and by giving Notices of Rent Increase addressed only to that tenant with no mention of the co-tenant. Therefore, I find that the parties entered into a new tenancy agreement, and the landlords had no legal right to return the security deposit to the co-tenant. It was up to the tenant and the co-tenant to apportion the monies returned.

I find that the tenant has established the claim of double the security deposit, or \$1,250.00. Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,350.00.

This order is final and binding and may be enforced.

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 06, 2018

Residential Tenancy Branch