



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT 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 the security deposit or pet damage deposit; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also 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 landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for reimbursement of a portion of rent paid or education fees?

Background and Evidence

The parties agree that this fixed term tenancy began on September 1, 2017 for rent in the amount of \$4,900.00 per month, which was to expire on June 30, 2018, thereafter reverting to a month-to-month tenancy. The tenant sub-let rooms to sub-tenants over the course of the tenancy, and not all of the rental amounts for sub-tenants was the same. The landlord collected a security deposit from the tenant in the amount of \$2,450.00 and the tenant collected security deposits from the sub-tenants. The amount of the security deposit still held in trust on behalf of this tenant is \$490.00. Any pet damage deposit collected was

paid to the landlord by other sub-tenants who had pets. The tenant vacated the rental unit on April 22, 2018 and another tenant signed a new lease with the landlord. The rental unit is a 5 bedroom single family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant claims \$490.00 as return of her portion of the security deposit. The tenant testified that she provided a forwarding address in writing to the landlord by regular mail on May 8, 2018 and has provided for this hearing a copy of a Canada Post cash register receipt bearing that date as well as a copy of the note sent to the landlord. The tenant has not been served with an Application for Dispute Resolution by the landlord claiming against the security deposit and has not returned any portion of it.

The tenant moved out early after signing a Mutual Agreement to End Tenancy effective April 1, 2018, however the tenant actually vacated on April 22, 2018 and paid rent to the end of April. The tenant claims \$250.00 for leaving the rental unit early after having paid rent for the full month of April. The tenant testified that the landlord and the new tenant agreed to that, but it has not been reimbursed. When the new tenant entered into a new tenancy agreement with the landlord the tenant was told to move out.

The tenant also claims \$545.00 for an education fee paid, however the tenant failed the courses due to stress and threats made by the landlord and sub-tenants. A copy of a text message from the landlord to the tenant has been provided for this hearing which states that the other sub-tenants are thinking of reporting the tenant for living in Canada illegally, and please think about it. It is dated June 29, 2018. The tenant also testified that one of the sub-tenants showed up at the tenant's new rental unit around May 10, 2018 and yelled at the tenant and threatened the tenant. The tenant believes the landlord provided the sub-tenants with the tenant's new address.

The tenant's total claim is \$490.00 for return of the security deposit; \$250.00 for reimbursement of a portion of April's rent; \$545.00 for the education fees; and recovery of the \$100.00 filing fee for the cost of this application, for a total of \$1,385.00.

The landlord was aware of other sub-tenants, but moved to Ontario and believed the sub-tenants were paying an equal amount of rent. However, the tenant collected more money from the sub-tenants.

The landlord agreed to reimburse a portion of the tenant's rent if the tenant found another tenant to take over her share of the lease for the last week of the tenancy, however one of the sub-tenants took over as the sub-landlord, and another tenant did not move in for the last week of April. The tenant signed a Mutual Agreement to End Tenancy effective April

1, 2018 which was the end of this tenancy, and the new tenant signed a new lease effective April 1, 2018, and the landlord allowed the tenant to stay longer than the effective date of the mutual agreement, but denies any amount is owed to the tenant.

The security deposit, totaling \$2,450.00, was paid by the tenant and individual sub-tenants in equal shares of \$490.00. A pet damage deposit was also collected by the landlord, however that was paid by sub-tenants who had pets, not by this tenant. The landlord also testified that she kept the tenant's security deposit because she was told that someone was smoking marihuana in the house and that the tenant didn't take care of the yard or the rental unit. The landlord also believed that she could dispute the tenant's claim for the return of the security deposit at this hearing and didn't need to make a separate claim.

The landlord was also under the impression that if the tenant charged more rent to sub-tenants, the landlord had to agree to that. However, in this case, the parties verbally agreed that rent would be split 5 ways, but sub-tenants were paying much more, and the tenant did not act in good faith. The landlord did not agree to that, and had no idea about it. Later, the tenant told sub-tenants that the landlord wanted more rent. The sub-tenants also told the landlord that they were worried that the tenant would ask them to leave.

The landlord believes she received the tenant's forwarding address in writing sometime in June, 2018.

Analysis

Firstly, the *Residential Tenancy Act* permits sub-letting with the landlord's written consent, and if a sub-lease exists the tenant becomes the landlord of the sub-tenants. There is no law about how much the tenant can rent the rooms for to the sub-tenants, just like there is no law about how much a landlord can charge a tenant for rent.

With respect to the security deposit, the *Residential Tenancy Act* states that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return a security deposit or pet damage deposit to a tenant in full or make an application for dispute resolution claiming against the deposit(s). If the landlord fails to do either within that 15 day period, the landlord must repay the tenant double the amount.

In this case, the tenant testified that she moved out on April 22, 2018 and sent her forwarding address to the landlord on May 8, 2018 and has provided proof of that. The landlord believes it was received sometime in June, 2018, however the *Act* specifies that documents served by regular mail are deemed to have been received 5 days after mailing.

Regardless of when the landlord received it, the landlord did not return the security deposit to the tenant or make an Application for Dispute Resolution within 15 days. The tenant made the application for Dispute Resolution on July 12, 2018, and I am satisfied that the tenant is entitled to double the amount of the security deposit, or \$980.00.

With respect to the tenant's claim for damage or loss, in order to be successful, the tenant must establish amounts, and that the tenant suffered damages or a loss, and that such damage or loss was a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement, and what efforts the tenant made to mitigate any damage or loss suffered.

The tenant claims recovery of educational expenses from the landlord, testifying that the stress caused by the landlord caused the tenant to fail the classes. The tenant also testified that the sub-tenants went to the tenant's new place of residence and feels they learned that address from the landlord. I have reviewed all of the text messages and other evidentiary material, and although that may not be an ethical thing to do, I am not satisfied that the tenant has established that any stress that may have been caused, or the failure of the courses, was a result of the landlord's failure to comply with the *Act* or the tenancy agreement. The tenant's application for recovery of educational fees of \$545.00 is dismissed.

With respect to an over-payment of rent, the landlord testified that although the parties had mutually agreed to end the tenancy effective April 1, 2018 and had a new tenancy agreement with another tenant effective April 1, 2018, the landlord allowed the tenant to stay longer than April 1, 2018. The landlord also testified that she had agreed to refund rent for the last week of the tenancy if the tenant had another tenant to take over the lease. What in fact happened, was a sub-tenant of the tenant took over the lease, and no one took that person's room for the last week of April. The landlord, or sub-tenants, may have told the tenant that she would be reimbursed, but I see no evidence that the landlord had any obligation to do so, especially considering that no other tenants moved in for the last week of April, 2018. The tenant's application for \$250.00 for a refund of the last week of rent is dismissed.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant in the amount of \$1,080.00 (\$980.00 for double security deposit + \$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 landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,080.00.

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: November 09, 2018

Residential Tenancy Branch