



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On August 13, 2018, a hearing was held to address Tenant N.S.'s application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Tenant N.S. served her evidence on the landlord on July 25, 2018, over six months after serving the landlord with Notice of Dispute Resolution Proceeding. As a result, the landlord served Tenant N.S. with evidence on August 6, 2018, which was less than seven full days prior to the hearing. Tenant N.S. stated she did not have sufficient time to review the evidence. Both parties agreed to adjourn the hearing to allow Tenant N.S. time to review the landlord's evidence.

The parties were given specific instructions that no additional evidence was permitted to be submitted to the Residential Tenancy Branch in relation to this matter.

The reconvened hearing was held on December 11, 2018 resulting in this Decision. The Decision is to be read in conjunction with the Interim Decision dated August 13, 2018.

Issue(s) to be Decided

Is Tenant N.S. entitled to the return of the security deposit? And if so, is Tenant N.S. entitled to any statutory compensation equivalent to the amount of the security deposit for the landlord's failure to comply with the *Act*?

Is Tenant N.S. entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Although Tenant N.S. and another co-tenant (A.M.) were tenants on a previous tenancy agreement dated October 23, 2015 with this landlord, that tenancy ended October 4, 2017. Therefore, that tenancy agreement is a separate tenancy agreement and is not discussed in relation to the current dispute, other than for the fact that the landlord transferred the security and pet deposits, totalling \$1,495.00 from that tenancy to the subsequent tenancy agreement dated October 5, 2017, which is the subject of this dispute. Tenant N.S. testified that she was the person who actually paid the \$1,495.00 in deposits.

A new tenancy agreement was entered into by Tenant N.S., Tenant S.T. and Tenant P.B. on October 5, 2017. Monthly rent for this month-to-month tenancy was \$1,600.00 payable on the first of the month. As explained above, the landlord transferred the \$747.50 for the security deposit and \$747.50 for the pet damage deposit for this tenancy from the previous tenancy.

Tenant N.S. provided testimony regarding the breakdown in her relationship with Tenant S.T. that ultimately resulted in Tenant N.S. being removed from the rental unit by police on November 23, 2017. Consequently, Tenant N.S. was unable to return to the rental unit while it was occupied by Tenant S.T.

The landlord's agent testified that on November 30, 2017, Tenant S.T. gave written notice to end the tenancy effective November 30, 2017. Although Tenant S.T. did not provide one month's notice, the landlord's agent testified that the landlord agreed to accept the short notice to end the tenancy. Tenant S.T. provided the landlord with written notice that she wished to appoint an agent, G.M. to act on her behalf to participate in the condition inspection move-out on November 30, 2017. At the condition inspection, the tenant's agent provided written authorization to the landlord to withhold \$790.00 from the security and pet damage deposits due to damages to the rental unit. The landlord's agent testified that this was written on the move-out condition inspection report which was submitted into documentary evidence. The landlord's agent testified that at the move-out condition inspection the tenant's agent provided a written forwarding address for the return of the remainder of the deposits, which was written on the condition inspection report.

The landlord's agent testified that the remaining amount of the security and pet deposits of \$705.00 was returned to Tenant S.T. on December 6, 2017 and the landlord submitted into documentary evidence an accounting ledger as confirmation. Further to this, the landlord's agent testified that Tenant S.T. entered into a new tenancy agreement with the landlord, effective December 1, 2017, to remain in the rental unit. The landlord's agent testified that Tenant S.T. undertook repairs to the damages noted on the condition inspection report and was later refunded the \$790.00 originally deducted. The landlord's agent referred to an entry dated April 4, 2018 in the accounting ledger as evidence of this returned amount.

Tenant N.S. testified that Tenant S.T. never paid any money towards the security and pet damage deposits and therefore was not entitled to the return of those deposits. Further to this, Tenant N.S. objected to the fact that G.M. was allowed to act as an agent on behalf of Tenant S.T. and that G.M. provided written authorization to the landlord to make a deduction from the deposits for damages. Tenant N.S. testified that G.M. was Tenant S.T.'s boyfriend and that G.M. had a no contact order with Tenant S.T.

Tenant N.S. argued that Tenant S.T. contrived with the landlord to have her removed from the tenancy.

Analysis

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security and/or pet damage deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing

Section 38(4) of the *Act* allows a landlord to retain an amount from a security and/or pet damage deposit if the tenant agrees in writing.

Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement, as follows, in part:

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 any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

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.

*A security deposit or a pet damage 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 deposit.***

[My emphasis added]

In this matter, I refer to the documentary evidence submitted by the landlord and I find that Tenant S.T. gave written notice on November 30, 2018 to the landlord to end the tenancy effective November 30, 2018. I find that Tenant S.T. was one of three co-tenants named on the written tenancy agreement dated October 5, 2017, and therefore Tenant S.T. was a “party to the tenancy agreement” and was entitled to give notice to end the tenancy on behalf of all the tenants. I find this to be proper notice as Tenant S.T. provided this notice in writing, and the landlord accepted this notice to end tenancy. It is at the liberty and discretion of the landlord if they choose to accept a tenant’s notice to end a tenancy not given a month in advance.

The landlord’s agent testified that written authorization was provided by Tenant S.T.’s agent, G.M., for the landlord to retain \$790.00 for damages to the rental unit, and that the remaining amount of the security and pet deposits, \$705.00, was returned to Tenant S.T., within 15 days of the end of the tenancy and receipt of the forwarding address. I find that Tenant S.T., as a named tenant on the tenancy agreement and therefore a “party to the tenancy agreement”, was entitled to engage an agent to act on her behalf to attend the move-out condition inspection and negotiate with the landlord any amount to be retained from the deposits in satisfaction of damages caused by the tenants to the rental unit.

I find that the landlord has provided sufficient evidence by way of the accounting ledger and condition inspection report, submitted into documentary evidence, to prove that written authorization was provided to the landlord by Tenant S.T.’s agent allowing the landlord to retain a portion of the deposits, and that the landlord returned the remaining amount of the deposits to a named tenant on the tenancy agreement. The accounting ledger further shows that the retained amount of the deposit was later returned to Tenant S.T. as the damages were repaired.

In summary, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord addressed the security and pet deposits in accordance with section 38 of the *Act*, by returning the security and pet deposits to one of the named tenants who was “a party to the tenancy agreement”. Therefore, Tenant N.S.’s application is dismissed.

As Tenant N.S. was not successful in her application, she bears the cost of her filing fee.

Conclusion

The application is dismissed. The applicant bears the cost of the filing fee.

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 14, 2018

Residential Tenancy Branch