



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit. One of the co-tenants appeared at the scheduled hearing; however, there was no appearance on part of the landlord. The teleconference call was left open for at least 20 minutes to give the landlord the opportunity to appear.

Since the landlord did not appear I explored service of the hearing documents upon the landlord. The tenant testified that she sent the hearing documents to the landlord via registered mail within three days of filing and she also emailed them to the landlord. The tenant provided images of text messages she received from the landlord acknowledging the landlord was aware of the hearing. I was satisfied the landlord was duly served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The tenancy started on November 7, 2017 and the tenants paid a security deposit of \$2,700.00 and a pet damage deposit. The rent was originally set at \$2,700.00 per month and the owner or her spouse had the right to use a loft space in the rental unit, with shared access to the kitchen and bathroom in the rental unit, pursuant to a term in the addendum. However, shortly after the tenancy started, the tenants were informed that the owner or her spouse would not be using the loft and the tenants were instructed to rent out the loft space to other roommates and pay more rent. The tenants initially

obtained one additional roommate starting November 17, 2017 and that roommate paid \$900.00 per month in rent, plus a \$450.00 security deposit. The landlord instructed the tenants to get one more roommate, which the tenants did, and the second additional roommate also paid \$900.00 per month, plus a \$450.00 security deposit. The tenants gave the additional security deposit to the landlord. The tenants collected the additional rent of \$1,800.00 per month from the two additional roommates and gave it to the landlord, less \$600.00 the tenants were permitted to retain due to the greater number of occupants sharing the common kitchen and bathroom, along with their monthly rent for a net monthly payment of \$3,900.00 to the landlord. The tenant stated that the landlord did not put these new terms in writing. The tenant suspected that is because the landlord had ended the previous tenancy for landlord's use and the landlord wanted a tenancy agreement that made it look as though the landlord was occupying the rental unit.

The tenant testified that one of the \$2,700.00 deposits was applied to rent, leaving a deposit of \$2,700.00 plus the additional deposits of \$450.00 each, or \$3,600.00, in trust at the end of the tenancy.

The tenants vacated the unit on July 1, 2018 and left a note in the kitchen with a forwarding address. On July 7, 2018 the tenants left a letter for the landlord containing the forwarding address in the mailbox at the residential property since this was the only service address provided to them by the landlord. On July 10, 2018 the tenant text messaged her forwarding address to the landlord and faxed a copy of a letter with the forwarding address to the fax number provided by the landlord. The letter dated July 10, 2018 was included in evidence and indicates that there were additional security deposits paid by the additional roommates. On July 22, 2018 the tenant sent an message to the landlord who responded on July 23, 2018 by stating the landlord would try to repay the deposits by the end of the month. When a refund was not forthcoming the tenant sent another message to the landlord on August 1, 2018. The landlord finally responded on August 15, 2018 but when no refund was received the tenants proceeded to file this Application. The tenants' Application also indicates that the deposits paid to the landlord totalled \$3,600.00 $[(\$2,700.00 + \$450.00 \times 2)]$.

As a courtesy, the tenants email a copy of the hearing package to the landlord and the landlord responded by stating the landlord would repay the deposits if the tenant cancelled the hearing.

On November 13, 2018 the tenant sent another email to the landlord and the landlord responded by stating the landlord was working on getting the deposits refunded and for

the first time made allegations the unit was not left clear enough. The tenant disagreed with the landlord's position regarding the level of cleanliness.

The day before the hearing, the tenant received an email from the landlord stating the landlord was having economic issues.

Analysis

As provided under section 2 of the Act, the Act applies to tenancy agreements between a landlord and tenant, rental units and residential property; however, section 4 exempts certain living accommodation from the Act. Section 4(c) provides that living accommodation where the tenant shares a kitchen or bathroom facility with the owner of the property is exempt from the Act.

The addendum to the tenancy agreement provides that the only occupants of the rental unit were to be the tenants named on the tenancy agreement plus the loft would be for the use of owner or owner's immediate family. The tenant stated that the loft was open to the main part of the rental unit and that occupants of the loft would use the kitchen or bathroom that the tenants used. Based on the tenancy agreement as it was written, and considering the configuration of the unit as described by the tenant, it would appear as though the living accommodation may have been exempt from the Act pursuant to section 4(c); however, based on what the unopposed submissions of the tenant, it appears as though the parties mutually agreed to modify the terms of their agreement shortly after the tenancy commenced to reflect the loft area would be used by other roommates and not the owner(s). The tenant submitted that the two additional roommates were added to the loft, with shared access to the tenants' kitchen and bathroom, upon the landlord's instruction and the tenants did not object and satisfied the landlord's instructions. Section 14(2) permits parties to amend the terms of their tenancy provided all parties are in agreement. As such, I find that based on the amended terms of tenancy this was not living accommodation where the tenants shared a kitchen or bathroom facility with the owners of the property and the tenancy is not exempt from the Act. Therefore, I find the landlords are obligated to comply with the Act.

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides

that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, I accept the unopposed evidence that the landlord was holding \$3,600.00 in deposits at the end of the tenancy. I further find, based on the undisputed evidence, that the tenancy ended and the tenants provided their forwarding address to the landlord in writing in July 2018 and the landlord has yet to refund the deposits to the tenant, file an Application for Dispute Resolution to make a claim against the deposits, or get the tenants' consent in writing to retain the deposits. Therefore, I find the landlord to be in violation of section 38(1) of the Act and must now pay the tenants double the deposits, or \$7,200.00 as requested by the tenants.

I further award the tenants recovery of the \$100.00 filing fee they had to pay for this application.

In light of the above, I provide the tenants with a Monetary Order in the total sum of \$7,300.00 to serve and enforce upon the landlord.

Conclusion

The tenants are provided a Monetary Order in the sum of \$7,300.00 to serve and enforce upon the landlord.

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 21, 2018

Residential Tenancy Branch