



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order under the Residential Tenancy Act (the Act) for the return of the security deposit and to recover the filing fee. I find that the tenant's application is sufficiently clear in its request of compensation for loss in respect to an amount identified as \$1400.00 for an 'oil tank deposit'. Therefore, I accept the application includes a request of compensation for loss.

Both named parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties acknowledged exchange of evidence as provided to this proceeding. The parties were provided opportunity to mutually settle their dispute to no avail. The hearing proceeded on the merits of the tenant's application. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence they wished to present.

I have reviewed all oral, written and document evidence before me, however, only the evidence relevant to the tenant's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

I have benefit of a copy of the tenancy agreement which names two individuals as co-tenants of the contractual tenancy. The relevant evidence in this matter is as follows and is undisputed by the parties. The tenancy began December 01, 2017 and has ended. Rent in the amount of \$1650.00 was payable in advance on the first day of each month. The stated payable rent included the usual amenities including partial furnishings, however did not include any utilities. At the outset of the tenancy the landlord collected a security deposit for the tenancy in the amount of \$825.00. The tenancy ended February 24, 2018 following the applicant tenant moving out January 31, 2018, and the subsequent death of the second tenant in the first week of February 2018.

The parties agree that as part of the tenancy agreement the landlord collected an "oil tank deposit" for fuel oil in the amount of \$1400.00 of which the parties further agree the landlord retains \$1005.98 following the oil tank's re-fill or top-up in the amount of \$394.02, at or near the end of the tenancy; and indicating the tenant's usage during the tenancy.

On November 30, 2017 the parties conducted a move in inspection. On February 24, 2018 the landlord conducted a move out condition inspection of the rental unit with the legal/personal representative of the deceased tenant's estate and last occupant of the rental unit following the applicant tenant's departure from the unit days earlier. The landlord testified and provided evidence that at the move out inspection it was agreed by the personal representative of the deceased's estate and the landlord that the landlord would retain the security deposit of \$850.00 in its entirety.

In respect to the \$1005.98 balance of the 'oil tank deposit', the landlord determined to retain it, largely in part to offset a myriad of alleged damages to the unit.

The tenant in this matter sought to recover, what they determined to be *their share* of the security deposit as the deceased co-tenant had agreed to provide them upon

moving, as well as the balance of the 'oil tank deposit', which the parties agreed was supplied to the landlord by the applicant tenant. The landlord argued that as there were two tenants in the rental unit it would only be appropriate for the applicant to receive solely half of any remaining tank deposit.

Analysis

I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and testimonial evidence of the parties, I find as follows.

It must be known that a contractual tenancy naming two individuals as co-tenants creates a tenancy in which each party is jointly and severally obligated but also command rights equally under the contract. The legal principle states it as that of a legal obligation undertaken by two or more people with each individual having liability for the whole, but also equally commanding any rights in respect to the contract or tenancy.

I find that in this matter, there existed one tenancy, undertaken under one agreement (contract), providing one security deposit ,and one 'oil tank deposit', with each individual having equal control of the rights and obligations of the tenancy. In other words, either individual of the tenancy could exercise a right under the tenancy agreement. In this matter I find that despite what agreement may have been made between the co-tenants, the legal/personal representative of the deceased tenant rightfully permitted the landlord to retain the security deposit. **Residential Tenancy Policy Guideline 13 – Rights and Responsibilities of Co-tenants** aptly states the foregoing matter as follows,

A security deposit or a pet damage deposit¹ 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.

As a result, if the applicant tenant seeks any portion of the security deposit to which they are entitled they must look to the legal/personal representative of the deceased. On this basis the tenant's application for the security deposit is **dismissed**, without leave to reapply.

I find that in this matter the \$1400.00 'oil tank deposit' was in fact a pre-payment for fuel oil for the tenancy, as the rent did not include utilities. I find that it was paid to the landlord for the landlord to then supply the tenancy with fuel oil. I find that as a *deposit* it was subject to eventual final settlement. At the end of the tenancy the landlord determined the tenancy owed solely \$394.02 for the fuel oil utility and as a result any remaining fuel oil deposit belongs to the tenant. I find that despite the thinking of the landlord, they are holding \$1005.98 *in trust* and are obligated to return it to either co-tenant. As in the scenario presented above respecting the security deposit, if the deceased's estate seeks claim on any portion of the remaining 'oil tank deposit' they may look to the recipient tenant. As a result of all the above I find that the applicant tenant of this matter as a co-tenant is owed the balance of the 'oil tank deposit' in the amount of **\$1005.98**, and I will so Order.

As the tenant was largely successful in their application they are entitled to recover their filing fee of \$100.00 from the landlord for a total award of **\$1105.98**.

Conclusion

The tenant's application in part has been granted, and the balance of their application dismissed.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$1105.98**. The tenant is given this Order. If necessary, the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: January 09, 2019

Residential Tenancy Branch