



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD

### **Introduction**

This hearing dealt with the tenant's applications pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67.

The landlord, tenant L.T. and tenant L.T.'s advocate (the "tenant's advocate") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's advocate submitted that the landlord was served with tenant L.T.'s application for dispute resolution on May 15, 2019 via registered mail. The landlord testified that she received tenant L.T.'s application on May 16, 2019. I find that the landlord was served with tenant L.T.'s application in accordance with section 89 of the *Act*.

### **Preliminary Issue- Two applications**

The tenant's advocate testified that two identical applications for the same claim were filed by her advocacy group on behalf of tenant L.T. and were subsequently crossed by the Residential Tenancy Branch. The tenant's advocate withdrew the first application.

I dismiss tenant L.T.'s first application. The file number of the dismissed application is located on the cover page of this decision.

### **Issue to be Decided**

1. Is the tenant L.T. entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

### **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of t tenant L.T.'s and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2019 and ended on March 1, 2019. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. Tenant L.T. and tenant M.C. (the "tenants") signed a written tenancy agreement which was entered into evidence. The tenants each paid the landlord \$375.00 towards the security deposit, for a total of \$750.00. Both parties agree that the tenants each paid the landlord \$50.00 per month for utilities over and above the rental rate. Both parties agree that the tenants each paid the landlord \$750.00 per month for their respective portions of the rent. The tenancy agreement states:

Tenants pay 100.00\$ for utilities each month.

Both parties agree to the following facts. Tenant M.C. provided the landlord with notice to end her tenancy on January 25, 2019. The notice was entered into evidence and does not mention tenant L.T. After the landlord received tenant M.C.'s notice, she approached tenant L.T. with a Mutual Agreement to End Tenancy (the "Mutual Agreement") which both parties signed. The Mutual Agreement was entered into evidence.

The landlord testified that she approached tenant L.T. with the Mutual Agreement because she wanted to make sure tenant L.T. knew that the tenancy was ending and because it would be tidier this way.

Both parties agree that a move in condition inspection report was completed by both parties on January 25, 2019. The landlord testified that she was supposed to complete the move out condition inspection report with tenant L.T. on February 28, 2019 but tenant L.T. did not move out under after 9:00 p.m. and the landlord was not available at

that time. The landlord testified that she contacted tenant M.C. who was available to complete the move out condition inspection report on March 1, 2019.

The landlord testified that she and tenant M.C. jointly completed the move out condition inspection report on March 1, 2019. The move out condition inspection report was entered into evidence. The landlord did not fill in section Z of the condition inspection report in which the damage to the subject rental property the tenants were responsible for was supposed to be listed. Tenant M.C. did not fill in section 1 of the move in condition inspection report in which she was supposed to indicate if she agreed or disagreed with the landlord's assessment of the condition of the rental unit. Tenant M.C. did fill in section 2 in which she agreed to allow the landlord to deduct \$375.00 from the security deposit.

The tenant's advocate submitted that the failure of the landlord to complete section Z and section 1 of the move out condition inspection report breaches the Residential Tenancy Act Regulation and the landlord is therefore not entitled to retain the tenant's security deposit.

The landlord testified she returned the remailing \$375.00 of the security deposit to tenant M.C. less a \$15.00 cleaning fee. A receipt showing same was entered into evidence.

The tenant's advocate submitted that another member of her advocacy group served the landlord with tenant L.T.'s forwarding address in writing via regular mail on April 17, 2019. The landlord testified that she did not receive the April 17, 2019 letter.

The tenant's advocate submitted that the tenants were tenants in common, not co-tenants, despite the fact that the tenants jointly signed one tenancy agreement. The tenant's advocate submitted that the following factors point to a tenancy in common:

- The tenants paid the landlord for their portion of utilities separately.
- The tenants paid the landlord for their portion of security deposit separately.
- The tenants paid the landlord for their portion of rent separately.
- In all the communications between the landlord and the tenants, the tenants never spoke on behalf of the other.
- A notice from the landlord to tenant L.T. for a tenancy violation was addressed only to tenant L.T. The violation letter was entered into evidence.
- The landlord returned tenant M.C. her portion of the security deposit.
- The wording of the receipt provided to tenant M.C. when her portion of the security deposit was returned indicates that the tenants were tenants in common

because if the tenants were joint tenants, the receipt should have mentioned \$750.00 (the full sum of the security deposit), and it did not.

The landlord testified that it was always the understanding of both parties that the tenants jointly rented the subject rental property. The landlord testified that she did not rent out rooms to each tenant. The landlord testified that this was a joint tenancy agreement as evidenced by a single tenancy agreement.

The tenant's advocate submitted that the tenant is seeking double her portion of the security deposit in the amount of \$750.00.

### **Analysis**

Residential Tenancy Policy Guideline 13 states:

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....

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.

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy. **In the absence of clear evidence of a tenancy in common, there is a presumption**

**in law of a joint tenancy. (emphasis added)**

I find that the tenant has not proved, on a balance of probabilities that the tenants were tenants in common. The fact that the tenants paid their portion of rent, utility and security deposit separately does not indicate a tenancy in common. It is a common practice for room mates to separately pay the landlord for their share of rent, utilities and the security deposit. The remainder of the factors indicated by the tenant's advocate as indicating a tenancy in common are not strong enough to overturn the presumption of a joint tenancy, especially in light of the single signed tenancy agreement signed by both parties.

The presence of the tenancy agreement is clear evidence of the intention of the tenants to enter into a joint tenancy. Had the tenants wished to enter into a tenancy in common, separate tenancy agreements should have been signed. Based on the signed tenancy agreement and the testimony of the landlord, I find that the tenants were joint tenants.

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained either of the tenants written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

As stated above, 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. I find that on March 1, 2019, tenant M.C. agreed in writing to allow the landlord to keep \$375.00 from the security deposit, the landlord was therefore within her rights to withhold that amount. The tenant's application is therefore dismissed.

I note that sections 20(1)(i), (j), and (k) of the Residential Tenancy Act Regulation state:

**20** (1)A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

(i)a statement identifying any damage or items in need of maintenance or

repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I, .....

Tenant's name

☐ agree that this report fairly represents the condition of the rental unit.

☐ do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....  
.....  
.....  
.....;

Section 35(3) of the *Act* states that the landlord must complete a condition inspection report in accordance with the regulations.

Section 36(2) of the *Act* states:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the breach of sections 20(1)(i), (j), and (k) of the Residential Tenancy Act Regulation do not result in the extinguishment of the landlord's right to retain the deposit under section 38(4)(a) of the *Act*. Section 36(2) of the *Act* sets out when the landlord's right to claim against the security deposit is extinguished- it makes no mention of section 20 of the Residential Tenancy Branch Regulations. I find that the omission of the data required in 20(1)(i), (j), and (k) of the *Act* does not invalidate the entire move

out condition inspection report or tenant M.C.'s written authorization allowing the landlord to retain \$375.00 of the tenants' security deposit.

I accept the landlord's testimony that she did not receive the tenant's forwarding address in writing.

Residential Tenancy Policy Guideline 12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. I find that the tenant failed to prove that the landlord received the tenant's forwarding address in writing. I also dismiss the tenant's application on this ground.

### **Conclusion**

The tenant's application is dismissed without leave to reapply.

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: August 16, 2019

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Residential Tenancy Branch