



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1079447 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order for the return of double his security and pet damage deposits in the amount of \$2,416.66 that the Tenant says the Landlord is holding without cause.

The Tenant's mother, S.C. ("Advocate"), an agent for the Landlord, M.K. ("Agent"), and counsel for the Landlord, A.S. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2019, with a monthly rent of \$2,900.00, due on the first day of each month. They agreed that the tenancy was between the Landlord and three tenants, including “K.B.”, “T.M.”, and the Tenant. This tenancy ran from September 1, 2019 to August 31, 2020.

The Parties agreed that the tenants paid the Landlord a security deposit of \$1,450.00, and a \$1,450.00 pet damage deposit. They agreed that the Tenant moved out on September 15, 2020, and that he provided the Landlord with his forwarding address in writing on October 5, 2020.

The Advocate said that the Tenant contributed one-third of the security deposit or \$483.33 and one-half of the pet damage deposit or \$725.00. The Tenant has claimed for the return of double these amounts pursuant to section 38(6) of the Act.

In the hearing, Counsel said:

The Landlord entered into a tenancy agreement with three tenants, “KB”, “TM”, and the Tenant. The Landlord required a security deposit of \$1,450.00 and a pet damage deposit of \$1,450.00; the Landlord wasn’t privy to division of deposits between them. The Landlord received deposits from [K,B.], as evidenced by document number 4, which shows an electronic transfer to the Landlord’s Agent.

In August 2020, the tenants advised Landlord that [the Tenant] would be moving out at end of term, but [K.B.] and [T.M.] would remain and enter a new agreement for August 31, 2020 to August 31, 2021. The move-out report for the tenants dated August 31 is at document 2.c. The new tenancy agreement with remaining tenants is at document 3.a.

[The Tenant’s] representative indicated that the Tenant did not move out until September 15.

Counsel directed my attention to RTB Policy Guideline 13 (“PG #13”): “Rights and Responsibilities of Co-tenants”. Counsel quoted from section F of PG #13:

F. SECURITY AND PET DAMAGE DEPOSITS

A security deposit or a pet damage deposit is paid in respect of a 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 dispute resolution for return of the deposit.

The landlord may return the deposit(s) plus any applicable interest to any tenant who is named on the tenancy agreement, regardless of who paid the deposit. .

[Counsel's emphasis]

Counsel said:

Although the Landlord was not privy to the specific details, they understood that [the tenants] had reached some sort of agreement. [The Tenant] would remain as a roommate for a fee unknown to the Landlord and for a time unknown to the Landlord. Their agreement also addressed deposits.

The Advocate directed my attention to an undated letter from “M.B.”, the Tenant’s girlfriend. In this letter, M.B. said that she was with the Tenant during the move-out inspection with the Landlord and the other tenants on August 31, 2020. She indicated that no one was dealing with the Tenant’s portion of the deposits that had been paid to the Landlord. She ended the letter, as follows:

He tried to leave on good terms, even having repaired a few things he felt were needed, as well as wanting to keep the friendship whole with his roommates, but unfortunately this was slightly warped due to the fact they will not return the money they are aware he is owed.

It is clear from that additional information, that there was an agreement between the tenants as to how he could stay in the premises after the expiration of the tenancy that he was previously a part of. There was an agreement reached as to rent and monies owed.

Counsel said:

What is occurring here, the Landlord was merely instructed by [K.B.] to apply the deposit to the next tenancy. The Landlord is an innocent party here. He followed the direction of one of the tenants. There was some agreement between [the Tenant] and the remaining tenants.

The Advocate said:

All their discussions were around the table and [the Agent] was involved. When [the Tenant] said he was moving in to that house, but none of them had the money, I and my husband gave them all the money. [The Agent] couldn't refund the security deposit, because others were living there. Me and my husband took all the money and paid up front we paid \$5,000.00 for all of them and then they were going to pay us back.

Counsel said: "This is an issue between [K.B.] and [the Tenant], not the Landlord."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pursuant to PG #13, I find that the Tenant has applied for relief against the wrong party in the wrong forum. I find that the Landlord received the deposits from the tenants, and I find that K.B. directed the Landlord to transfer the deposits to the new tenancy, as is authorized under Part F of PG #13.

Part D. "Debts and Damages" in PG #13 states:

Disputes between co-tenants are not within the jurisdiction of the RTA nor the MHPTA and cannot be resolved through the Branch.

Based on the evidence and authorities before me, I dismiss the Tenant's claim against the Landlord without leave to reapply, as I find it is a matter to be resolved between the tenants, separately from the Landlord.

The Tenant may consider seeking a remedy against his co-tenants from the Civil Resolution Tribunal at: "civilresolutionbc.ca" or at 1-844-322-2292.

Conclusion

The Tenant is unsuccessful in his Application, because the Landlord is not a party to the division of the security and pet damage deposits paid by the tenants to the Landlord for this tenancy.

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: April 01, 2021

Residential Tenancy Branch