Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR

Introduction

On May 17, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*").

Both Tenants attended the hearing, with M.B. attending as an advocate for the Tenants. Tenant A.B. advised of her correct legal name, and the Style of Cause on the first page of this Decision was amended to reflect this correction. The Landlord attended the hearing as well.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed and there were no issues concerning service. As such, all of the Tenants' evidence will be accepted and considered when rendering this Decision.

The Landlord confirmed that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to double the security deposit and pet damage deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started, with a third co-tenant, on August 5, 2020, that the rent was established at an amount of $2,000.00 per month, and that it was due on the first day of each month. A security deposit of $1,000.00 and a pet damage deposit of $1,000.00 were also paid, although the pet damage deposit was not noted on the tenancy agreement. A copy of the signed tenancy agreement was entered into evidence for consideration.

Despite A.B. confirming that she was one of three co-tenants who had signed the tenancy agreement that was submitted as evidence, she continued to advance the argument that she and Tenant A.W. were “tenants in common”. However, there was no documentary evidence provided of there ever being three, individual tenancy agreements for each Tenant. She testified that she provided a written notice to end the tenancy on March 12, 2022, with a “flexible” effective end of tenancy date, and she explained that this was due to a request by the Landlord. However, she could not explain what a “flexible” effective end of tenancy date was, or how this was permitted under the *Act*.

She advised that she then served another written notice to end the tenancy, dated April 4, 2022, with an effective end date of tenancy of April 24, 2022. She stated that this date was chosen because the Landlord asked her to leave on this date. She claimed that there was a mutual agreement, via text message, with the Landlord to end the

tenancy on this specific date; however, she could not point to any documentary evidence to corroborate this submission. Furthermore, she could not explain why she would provide a written notice to end the tenancy if there was already a mutual agreement that had been entered into.

M.B. advised that A.B. paid rent until the end of April 2022.

The Landlord advised that co-tenant S.B. informed her that the other co-tenants would be leaving and that she wanted to continue to live in the rental unit, which the Landlord agreed to. She stated that she informed the co-tenants that it was to be organized between them when to vacate the rental unit. She confirmed that she received a written notice to end tenancy on April 4, 2022, but she refuted that there was ever any mutual agreement to end the tenancy. She testified that A.B. left the rental unit in March 2022 sometime, that A.W. left the rental unit on April 23, 2022, and that she was not of the understanding that the entire tenancy would be ending as S.B. confirmed that she wanted to continue to occupy the rental unit.

She testified that she did not create a new tenancy agreement with S.B. or any other persons, and that S.B. continued to pay the rent in full for May, June, July, and August 2022, as per the terms of the tenancy agreement. As well, she stated that S.B. finally gave up vacant possession of the rental unit just prior to August 31, 2022. As it was her position that this co-tenancy ended when S.B. finally gave up vacant possession of the rental unit, she returned the security deposit and pet damage deposit to S.B., minus some deductions that S.B. agreed to in writing, and that this was done within 15 days of August 31, 2022.

A.B. acknowledged that she did not have any proof that S.B. ever engaged into a new tenancy after she or A.W. vacated the rental unit. In addition, she advised that she provided her forwarding address to the Landlord by hand on April 4, 2022.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Regarding this Application, the first issue I must address is the Tenants' claim that they

were “tenants in common”, I find it important to note that Policy Guideline #13 regarding rights and responsibilities of co-tenants outlines the following

> Co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Furthermore, this policy guideline states the following regarding Tenants sharing common space:

> Sometimes tenants under separate tenancy agreements share common space. Each tenant is responsible for the obligations established under their own tenancy agreement and is not responsible for debts or damages relating to the other tenancy.

When reviewing the consistent and undisputed evidence, I have before me one tenancy agreement with the three, individual Tenants named, and this was signed by all parties. Furthermore, there is no documentary evidence before me that these three, individual Tenants ever had their own, separate tenancy agreement with the Landlord.

Based on A.B.’s continued insistence on this scenario being a “tenants in common” situation, and given that they indicated in the notice to end tenancy of April 4, 2022, that they were seeking their portion of the deposits and or/rent returned, it appeared as if A.B. and A.W. had clearly acted on misinformation, or poor advice, when filing this Application. In my view, there is no evidence before me to support anything other than a co-tenancy. It is abundantly clear that the three, individual Tenants on the tenancy agreement had signed on as co-tenants, not as “tenants in common” as alleged by A.B. As such, I am satisfied that all three co-tenants are jointly and severally liable for this tenancy.

It is also abundantly evident that A.B., under this mistaken information, was attempting to carve off individual parts of the co-tenancy, and then end portions in a manner that did not comply with the *Act*. Clearly, as a co-tenancy, she cannot simply end her, and/or A.W.’s, portion solely. Moreover, while she claimed that there was a mutual agreement to end the tenancy with the Landlord, she could not direct me to any documentary evidence to corroborate this submission. As such, I reject this in its entirety.

Furthermore, she testified that she provided a written notice to end the tenancy on March 12, 2022, with a “flexible” effective end of tenancy date. As noted above, there are no provisions in the *Act* for a flexible end of tenancy date, and the notion of this would not be consistent with any logical interpretation of any parts of the *Act*. Despite her insistence that the Landlord requested a flexible end date of the tenancy, I find that this makes little sense, and I reject it in its entirety.

Additionally, I reject the Tenants’ claim that there was a mutual agreement to end the tenancy as there is no documentary evidence to support this position.

The only evidence I do have before me of the tenancy ending in compliance with the *Act* is the Tenants’ written notice dated April 4, 2022. Again, despite this notice indicating that this was a “tenancy in common”, I am satisfied that it clearly was not. As this was a co-tenancy, I find it important to note that the above policy guideline states the following:

> When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants. In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. If the tenant 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.

Furthermore, Sections 44 and 45 of the *Act* set out how tenancies end and also specify that the Tenants’ written notice to end a tenancy cannot be effective earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In essence, the Tenants must have given one, whole month’s notice in writing to end the tenancy. In this instance, the Tenants’ written notice had an incorrect end of tenancy date of April 24, 2022, and this would have automatically self-corrected to May 31, 2022, pursuant to Section 53 of the *Act*.

While A.B. and A.W. apparently moved out prior to April 24, 2022, I find it important to S.B. continued to live there after the effective date of the notice. As the co-tenants were jointly and severally liable, in my view, it would be up to the three co-tenants to physically move out of the rental unit based on this notice. While I accept that the Tenants complied with the *Act* and served a written notice to end the tenancy, as they did not ensure that all co-tenants gave up vacant possession on the corrected effective end date of the tenancy of May 31, 2022, I am satisfied that the tenancy did not in fact

end, especially given the fact that there was no evidence of a new tenancy agreement ever being established with any other persons.

Consequently, I am satisfied that A.B. and A.W. were still jointly and severally liable for S.B.'s actions of continuing the tenancy. As co-tenants, A.B. and A.W. were responsible for ensuring that S.B. also gave up vacant possession of the rental unit by May 31, 2022, in order to effectively end the tenancy. Clearly, A.B. and A.W. were mistakenly attempting to end a portion of the tenancy only, and I find that their actions not only contravened the *Act*, but were the cause of the confusion that led to this outcome. Given that I am satisfied that this co-tenancy continued, I accept the Landlord's uncontroverted evidence that the co-tenancy ended when S.B. gave up vacant possession of the rental unit near the end of August 2022.

It is apparent that many things have undoubtedly gone wrong in this tenancy, that there were many of the Tenants' actions that did not comply with the *Act*, and that much of these were borne out of poor information given to the Tenants. Moreover, it should be noted that it is fairly evident that a source of the dysfunction in this tenancy came from a likely personal conflict between the co-tenants, which is not entirely surprising given the high probability of differences occurring when persons choose to live together. As such, my findings are based on what is most likely to have happened in this situation, while applying the *Act*.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. This Section requires that the Landlord either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits within 15 days of either the end of the tenancy, or the date on which the Landlord receives the Tenants' forwarding address in writing. The Landlord must act accordingly from whichever date is later. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Section 38(4)(a) of the *Act* permits the Landlord to retain an amount from the security deposit or pet damage deposit if the Tenants agree in writing to withhold that amount.

While I accept that A.B. provided a forwarding address in writing on or around April 2, 2022, as noted above, I am satisfied that the co-tenancy did not end until S.B. gave up vacant possession of the rental unit in late August 2022. Based on the undisputed

testimony before me that the Landlord then returned the security deposit and pet damage deposit to the remaining co-tenant, less the agreed upon deductions, within 15 days of August 31, 2022, I am satisfied that the Landlord complied with her obligations under Section 38 of the *Act,* and I dismiss the Tenants' Application in its entirety.

Furthermore, as noted in Policy Guideline # 13, "If a dispute between [co-tenants occur] over debts or damages related to their co-tenancy, the two would have to resolve the matter outside of the Residential Tenancy Branch. Disputes between co-tenants are not within the jurisdiction of the RTA nor the MHPTA and cannot be resolved through the Branch." As the Landlord has fulfilled her obligations under the *Act*, this is clearly now a dispute between the co-tenants, and the parties should seek legal counsel to best determine how to remedy this matter.

Conclusion

The Tenants' 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: March 20, 2023

Residential Tenancy Branch