



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties 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 gave evidence with the aid of her support worker.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or the tenant's evidentiary materials. The landlord confirmed receipt of the tenant's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The tenant and landlord entered into an agreement in December, 2016 for a fixed term tenancy scheduled to end in May, 2017. Though the parties testified there was a written tenancy agreement, neither party submitted a copy into written evidence. The monthly rent was \$1,650.00. A security deposit of \$825.00 was paid at the start of the tenancy and is still held by the landlord.

Shortly after the tenancy agreement was created the tenant found a roommate who moved into the rental unit (the "roommate"). The tenant testified that the roommate contributed to the monthly rent and paid her, half of the security deposit for the tenancy. The tenant said that she was unaware of the roommate being added to the written tenancy agreement and believed she was the sole tenant for the duration of her tenancy. The landlord said that the roommate signed the original tenancy agreement and was added to the tenancy agreement.

In January, 2017 the tenant informed the landlord that she intended to move out of the rental unit. As she believed that she was the sole tenant listed on the lease she requested that the fixed term tenancy be assigned to the roommate. The tenant said that both the landlord and roommate agreed to the assignment. The tenant submitted into written evidence copies of text message conversations with the landlord as evidence of the landlord's consent.

At the hearing the landlord did not appear to comprehend the concept of an assignment. The landlord said that because the tenant was moving out he prepared a new tenancy agreement with the roommate. The parties confirmed that the tenant moved out of the rental unit in February, 2017. The landlord said that a new tenancy agreement was signed with the roommate for a fixed term of March 1, 2017 to September 30, 2017. The landlord said that the security deposit of \$825.00 from the first tenancy was applied to this new tenancy at the roommate's request.

The tenant said that she discovered that the landlord and roommate had entered a new tenancy when she saw a copy of the new written tenancy agreement while moving out. Because the original tenancy was ended by the landlord, rather than assigned to the roommate as requested, she is seeking a return of her portion of the security deposit in the amount of \$412.52.

Analysis

I accept the evidence of the parties that the tenant and landlord entered into a fixed term tenancy agreement in December, 2016. Residential Tenancy Policy Guideline 13 outlines the rights and responsibilities of co-tenants. Co-tenants are tenants who rent the same property under the same tenancy agreement and are jointly and severally liable for the tenancy. Co-tenants are different than occupants, who have no rights or obligations under the tenancy agreement, unless all parties agree to include the occupant as a tenant.

In the case at hand, as the tenant was unaware that the landlord added the roommate to the tenancy agreement, I find that the parties were not in agreement to the roommate becoming a co-tenant under the original tenancy agreement. Therefore, I find that the roommate remained an occupant with no rights or obligations under the original tenancy agreement.

Section 34 of the *Act* requires a landlord to consent in writing for a tenancy agreement to be assigned by the tenant. I find the text messages between the landlord and tenant to be insufficient evidence of the landlord's written consent. The landlord refers to the situation as the tenant "break the contract". During the hearing the landlord did not appear to have an understanding of the nature of an assignment. The landlord gave testimony that he believed that what transpired was the original tenant moving out and breaking the contract and that he was obligated to draft a new tenancy agreement with the roommate. Consequently, I find that there was no written consent provided by the landlord for an assignment of the original tenancy agreement to the landlord.

Based on the evidence of the parties, I find that the landlord was agreeing that the fixed term tenancy would end by February 28, 2017. I find that the original tenancy agreement between the landlord and tenant was ended by mutual agreement on February 28, 2017. In regards to the security deposit, as I have found that the roommate was not a co-tenant but an occupant with no rights or obligations under the original tenancy agreement I find that he had no right to direct the landlord use the security deposit from the original tenancy against the new tenancy agreement.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of 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 the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

There is insufficient evidence that the tenant provided the landlord with a forwarding address in writing. I find that the tenant has not yet provided a forwarding address in writing to the landlord. Therefore, the landlord's obligation under the *Act* to return the tenant's security deposit has not started. Once the tenant provides a forwarding address to the landlord in writing the landlord will then have 15 days to apply for dispute resolution or return the tenant's security deposit.

Conclusion

I dismiss the tenant's application with 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: May 19, 2017

Residential Tenancy Branch