



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for an order to keep the security deposit in partial satisfaction of the claim, for a monetary order for unpaid rent, for damage to or cleaning of the rental unit, for money owed or compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Tenant filed for a monetary order for return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

This tenancy began on September 1, 2011, with the Landlord entering into a written tenancy agreement with a third party not named in these proceedings (referred to as "Tenant A" in this Decision). This was to be a one year, fixed term lease, ending on August 31, 2012.

According to the testimony of the Landlord's Agent, Tenant A paid the Landlord a security deposit and a pet damage deposit.

The Applicant Tenant (referred to as "Tenant B" in this Decision), took an assignment of the tenancy agreement from the Landlord and Tenant A on January 16, 2012. The Landlord, his Agent, Tenant A and Tenant B all signed the assignment document.

Tenant B then vacated the rental unit two months early, in breach of the fixed term tenancy agreement. The Landlord is claiming for two months loss of rent under the assigned tenancy agreement, among other claims.

The assignment document has five paragraphs, two of which are reproduced below:

"... 2) Should the Assignee [Tenant B] fail to meet any of his responsibilities in the Agreement [referring to the tenancy agreement], the Assignor [Tenant A] will assume all remaining responsibilities of the original agreement.

... 4) The Deposit Monies paid by the Assignor [Tenant A] to the [Agent for the Landlord] will continue to be held by the Agent until the end of the Rental Agreement (August 31, 2012). Unless directed otherwise, the deposit monies will be returned to [Tenant A] within 14 days of August 31, 2012."

Tenant B filed the Application in his name, and provided no evidence that he had a direction from, or the authority of, Tenant A to claim for double the deposits.

The Landlord and Agent did not claim against Tenant A in their respective Application.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that both Applications should be dismissed for the following reasons.

According to the assignment agreement, the deposits are held for Tenant A. Therefore, I find only Tenant A has any right to claim against the security deposit or pet damage deposit. There was insufficient evidence that Tenant A approved or gave authority to Tenant B to claim against the deposits on her behalf. For these reasons I dismiss the claim of Tenant B without leave to reapply.

Tenant A will have to follow the Act in order to claim for the return of her deposits.

According to the assignment document, Tenant A assumes responsibility for the terms of the original agreement, if Tenant B has failed to meet his responsibilities.

Therefore, I find that the Landlord and Agent should have named Tenant A in their Application, as ultimately, Tenant A is responsible for the tenancy agreement or for any losses here according to the terms of the assignment agreement. I find that the Landlord and Agent's Application against Tenant B only must be dismissed, without leave to reapply.

The Landlord has leave to reapply against Tenant A and B together.

Lastly I note that the assignment was not done contrary to the Act. Guideline 19 to the Act contemplates that unless the landlord agrees to a complete release of liability, the original tenant may retain residual liability after the assignment of the tenancy agreement, if the assignee tenant fails to carry out the terms of the tenancy agreement. I find this is what happened here, Tenant A retains liability for the original tenancy agreement.

Conclusion

Both claims are dismissed without leave to reapply, as described above.

Tenant B had insufficient evidence that he had authority or right to claim for double the deposits paid, as these were held in trust for the original Tenant A.

As Tenant A is ultimately responsible for the original tenancy agreement, according to the terms of the assignment between the parties, the Landlord should have named Tenant A in the Application, as well as Tenant B.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: October 10, 2012.

Residential Tenancy Branch