Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This review hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the review hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

This was a review hearing held as the result of the landlord's application for review consideration; the landlord was not present at the original hearing held on September 6, 2013. The tenant was issued a monetary Order, naming the landlord. On October 21, 2013 the landlord applied for review consideration and it was determined that the review hearing should be held.

The tenant confirmed receipt of the Notice of review hearing dated October 30, 2013 and the landlord confirmed receipt of the tenant's application.

The tenant said she did not send the landlord her evidence package until December 3, 2013; it was sent via registered mail. The tenant believed it would be deemed served the next day. Section 90 of the Act determines that registered mail is served on the 5th day after mailing. The Residential Tenancy Branch Rules of Procedure require evidence be served at least 5 days prior to the hearing. Therefore, if the evidence was deemed served on December 8, 2013, it was not given at least 5 days before the hearing. The landlord said she did not receive the evidence package. As the evidence was not given to the landlord at least 5 days prior to the hearing and the landlord said she did not have the evidence I determined that the evidence should be set aside. The tenant was at liberty to make oral submissions.

The parties understood I would reference a copy of the tenancy agreement that had been supplied by the tenant and a copy supplied with the landlord's application for review consideration; neither party objected.

The landlord did not supply any evidence in response to the application for dispute resolution that the tenant sent her after the review consideration decision was completed. The application set out a claim in the sum of $590.00; for compensation damage and loss and return of the security deposit paid. The tenant said that she was claiming the cost of cable and hydro in the sum of $90.00; the application details did not provide a detailed breakdown of the claim. There was no dispute that a $500.00 deposit had been paid by the tenant.

As an application must include a detailed calculation of the claim I have considered only the sum claimed for the security deposit; as the parties did not dispute that a deposit had been paid and agreed on the amount of that deposit.

I have also referred to the landlord, E.H., as respondent and the tenant, W.V. as applicant.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties disputed the origin of this tenancy; the respondent said that the applicant signed the tenancy agreement before she did, several weeks prior to the start of the tenancy; December 1, 2012. The respondent then signed the agreement at a later date.

There was no dispute that the respondent paid a $1,000.00 security deposit to the property owners and that the applicant paid the respondent $500.00 of that deposit.

The applicant vacated the rental unit on April 21, 2013.

The applicant said that she never signed a tenancy agreement, with the property owner or the respondent. The applicant referenced an email sent to her by the property owners on April 25, 2013 which indicated that any issues the applicant had were with E.H., as she was the only tenant of the landlord.

There was no dispute that throughout the tenancy the applicant paid her share of the rent to the respondent via electronic transfer. The applicant made no payments directly to the property owner.

There was no dispute that a cheque in the sum of $500.00 was issued by the respondent, to compensate the applicant for her share of the security deposit. That cheque was subsequently cancelled by the respondent; who said the room had been left in poor condition. The respondent said she eventually received a refund of the security deposit, from the property owners, in the sum of $600.00 and that damage caused by the applicant resulted in the deduction from the deposit.

The respondent said she has a copy of the tenancy agreement that shows the tenant had also signed, as a co-tenant; a copy of that agreement was not provided as evidence. When the applicant vacated the home she left the respondent in a position where she had to pay all of the rent and locate a new roommate. The respondent did not directly respond to the email sent by the property owners, other than to say that she had a tenancy agreement that showed the applicant had signed the document.

The applicant said that despite many requests, the respondent had refused to provide her with a copy of the tenancy agreement and that it was not until she vacated that a copy was provided, via email, by the property owners.

Analysis

I have considered the testimony of both parties and in particular have taken into account the email sent by the property owner to the applicant, who applied as the tenant of E.H.

In the absence of any written submission by the respondent, who had applied requesting this review hearing, I find, on the balance of probabilities, that the applicant, W.V. did not sign a tenancy agreement with the property owners.

The email from the property owners had considerable weight. If the property owners had signed an agreement with both parties then the applicant and respondent would have been co-tenants. I find, on the balance of probabilities, that the applicant did not sign the agreement and that, although the intent was that she would be a co-tenant, she was in fact an occupant.

I have also based this decision on the copies of the agreements before me; the copy supplied by the applicant, sent to her by the property owners, showed only the respondents signature. I also considered the copy of the agreement supplied as evidence by respondent for review consideration; only 3 pages of that 6 page standard Residential Tenancy Branch agreement were supplied as evidence. That copy was missing the signature page. The evidence before me indicated that the respondent was the sole signatory to the tenancy agreement.

Further, the parties agreed that only the respondent paid rent to the property owners. In the absence of any evidence that the applicant interacted with the property owners, such as paying rent directly to the property owners, I find that the payments made were part of a roommate arrangement.

The *Act* defines a landlord as follows:

> ***"landlord"**, in relation to a rental unit, includes any of the following:*
> *(a) the owner of the rental unit, the owner's agent or another person who, **on behalf of the landlord,***
> *(i) permits occupation of the rental unit under a tenancy agreement, or*
> *(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
> *(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
> *(c) a person, other than a tenant occupying the rental unit, who*
> *(i) is entitled to possession of the rental unit, and*
> *(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
> *(d) a former landlord, when the context requires this;*
>
> (Emphasis added)

From the evidence before me I find that the applicant was not a tenant of the property owners, but a roommate of the respondent, E.H.

The respondent collected a security deposit from the applicant, who I have defined as the roommate. The respondent collected rent from the applicant and then made her rent payments to the property owners; who were her landlord.

I find that the respondent cannot meet the definition of a landlord as defined by the *Act*. There was no evidence before me that the respondent acted as agent, on behalf of the property owners.

Occupants are defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

> ***Occupants***
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> *Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a co-tenancy, where the applicant signed a tenancy agreement with the property owners, the *Act* does not apply. Therefore, I find that neither the applicant nor the respondent have any jurisdiction under this *Act*.

Section 82(3) of the Act provides:

> *(3) Following the review, the director may confirm, vary or set aside the original decision or order.*

Therefore, I find that **the decision and Order issued on September 6, 2013 are set aside** and replaced by this decision.

Conclusion

The decision and Order issued on September 6, 2013 are set aside.

Jurisdiction is declined.

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: December 13, 2013

Residential Tenancy Branch