Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the tenants for the return of all or part of the security or pet damage deposit.

The landlord appeared for the hearing and provided affirmed testimony and documentary evidence in advance of the hearing. The tenants appeared for the hearing with their mother and father as advocates to assist them in presenting their application. One of the tenants (MR) led the tenants' testimony during the hearing.

The tenant testified that she served the Notice of Hearing documents by registered mail on October 28, 2013 and provided the Canada Post tracking number as evidence for this method of service. The landlord confirmed receipt of the hearing documents by mail. Based on this and the Canada Post tracking numbers provided by the tenants, I am satisfied that the tenants have served the landlord with the Notice of Hearing in accordance with section 89(1)(c) of the *Residential Tenancy Act* (referred to as the "Act").

Both parties also confirmed receipt of each other's documentary evidence to be used in this hearing which was served in accordance with the Residential Tenancy Branch Rules of Procedure. While I have turned my mind to all the documentary evidence submitted prior to the hearing, not all details of the respective submissions and arguments are referred to in my decision.

Issue(s) to be Decided

- Did the landlord follow the Act in dealing with the tenants' security deposit?
- Is the tenant entitled to double the return of the security deposit?

Background and Evidence

Both parties agreed that this tenancy started on January 1, 2013. However, the tenants were allowed to move in earlier on December 19, 2012. A written tenancy agreement was completed by the landlord with three tenants. Two of these tenants are sisters who are the applicants in this case and the third tenant, not named in this application as a party to these proceedings, is referred to in this decision as NM.

The landlord met with all three of the tenants on December 19, 2012 at which point NM gave the landlord the tenants' security deposit in the amount of $600.00. Rent for the tenancy was established at $1,200.00 payable by the tenants on the first day of each month.

The landlord testified that all three of the tenants had provided post dated cheques for the monthly rent which comprised of three $400.00 cheques from each tenant relating to each month. The landlord testified that NM fell out with the other two tenants and asked to leave the tenancy at the end of August, 2013. The landlord testified that although NM left the tenancy in August, 2013, she still paid rent for September, 2013. The remaining two tenants then expressed concern with their obligations towards the tenancy and as a result, the tenancy was ended by mutual agreement with the landlord's permission for the end of September, 2013.

The landlord then scheduled a move-out inspection for September 29, 2013. The inspection was attended firstly by the two tenants named on this application. During the inspection, the landlord pointed-out that the rental suite had not been cleaned and had been left dirty and damaged. The landlord invited the two tenants to provide consent to make a deduction from the tenants' security deposit for the cleaning only. However, the tenants denied the deduction and left the rental suite after providing the landlord with a forwarding address.

The landlord then continued the inspection with NM who arrived after the other two tenants left, as NM was not on speaking terms with the tenants. Again, the landlord pointed out the cleaning and damages that had been caused to the rental suite by all of the tenants. The landlord testified that NM verbally agreed to the damages and cleaning and gave the landlord a forwarding address in writing. The landlord explained to NM that she would need written consent for the deduction and as a result, the landlord presented NM with a copy of the invoice on October 9, 2013, which was submitted as evidence for the hearing.

The invoice is dated October 9, 2013 and details the cost of the cleaning and damages incurred which was $728.40. The notice contains a declaration at the bottom of the form that NM agreed to the deductions for the damage and cleaning and was signed by NM accordingly on October 9, 2013. The landlord testified that she did not pursue the remaining amount after the deduction of the security deposit as it was not worth her time; however, the landlord submitted that the cleaning and damages caused by the tenants were in the thousands of dollars.

MR testified that NM was on the written tenancy agreement and that they were all co-tenants as per the written agreement. MR testified that the tenants were claiming the return of $400.00 for their portion of the security deposit which the landlord had failed to return after being given a forwarding address in writing and as a result, the monetary amount on the application was $800.00 to reflect the tenants' claim for the doubling penalty pursuant to section 38(6) (b) of the Act.

MR testified that the landlord had not consulted them about her intention to make the deduction and that the landlord had a requirement to prove the damages and cleaning to the rental suite which the tenants feel are unjustified. In addition, the cleaning and damage that the landlord referred to were caused by NM and not the tenants, and that NM should be held responsible for this and not the tenants.

Analysis

Policy Guideline 13 to the Act provides for the definition of a co-tenant being, two or more tenants who rent the same property under the same tenancy agreement. While I was not provided a copy of the written tenancy agreement between the parties, I accept the undisputed evidence of both parties that the landlord and the three tenants entered into a tenancy under one written agreement and I find that the tenants for this application and NM were all co-tenants in respect to this tenancy.

The policy guideline goes on to say that co-tenants are **jointly and severally liable** for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any **one** of the tenants. The responsibility then falls to the tenants to apportion amongst themselves the amount owing to the landlord. The guideline further stipulates that a security deposit is paid in respect to a particular tenancy agreement and regardless of who paid the security deposit, any tenant who is 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 damages.

Section 38(4) (a) of the Act states that a landlord may retain an amount from a security deposit if at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. The Act stipulates that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, obtain this written consent.

Therefore, the landlord had until October 15, 2013 to appropriately deal with the tenants' security deposit under the Act. As a result, I find that the landlord obtained the written consent from one of the tenants to keep the full amount of the security deposit on October 9, 2013, and that this was done in accordance with section 38(4) (a) of the Act.

As co-tenants are jointly and severally liable for a tenancy, there is no requirement on the landlord to seek the consent of **all** the tenants or to be held accountable for determining who was responsible for the damage and thereafter apportioning the security deposit to each of the tenants accordingly.

The tenants were cautioned that the Residential Tenancy Branch does not have jurisdiction in disputes between co-tenants and that the tenants should seek other legal remedy if they feel that NM had not acted appropriately in giving the landlord written consent to make a deduction from the security deposit.

As a result, I find that the tenants' application must fail as the landlord acted in accordance with the Act in dealing with the tenants' return of the security deposit.

Conclusion

For the above reasons, I dismiss the tenants' application without leave to re-apply.

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: January 31, 2014

Residential Tenancy Branch