



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit.

The tenant and one of the named landlords attended the hearing and each gave affirmed testimony. The other named landlord did not attend, and was not represented by the landlord who attended the hearing. The tenant testified that both landlords were served with the Tenant's Application for Dispute Resolution and notice of this hearing individually by registered mail on November 10, 2015 and has provided a copy of a Canada Post cash register receipt bearing that date and copies of the Registered Domestic Customer Receipts addressed to each landlord. I am satisfied that both landlords have been served in accordance with the *Residential Tenancy Act*.

All testimony and evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords, or any of them, for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on January 1, 2012 which reverted to a month-to-month tenancy after the first year. The tenancy ended on August 31, 2015. Rent in the amount of \$900.00 per month was payable on the 1st day of each month, which was reduced to \$800.00 per month, perhaps a year before the tenancy had ended, with the consent of the landlords and the tenant. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlords. A copy of a receipt for that security deposit has been provided. The landlords were spouses and both names appear on the tenancy agreement, a copy of which has also been provided.

On August 28, 2015 the tenant sent to the landlord (husband) a request for return of the security deposit in a memo which also contained the tenant's forwarding address. A copy of the memo

has been provided and the tenant testified it was sent by registered mail, and proof of that registered mailing has also been provided.

The landlord (husband) resides in Alberta, and the tenant has sent several registered mail items to him. The first was the tenant's notice to vacate the rental unit which was received by him. However, the landlord (husband) has not picked up the registered mail that contained the tenant's request for return of the security deposit, and has not picked up the registered mail that contained the Tenant's Application for Dispute Resolution and notice of this hearing. Both were returned to the tenant unclaimed. The tenant has not heard from the landlord (husband) at all and none of the security deposit has been returned to the tenant.

The tenant has changed her mailing address again, and the new address is the address on the Tenant's Application for Dispute Resolution.

The landlord testified that she and her spouse are now divorced and a Separation Agreement forms part of the divorce proceedings, which states that the husband will have full conduct of sale of the home, receives all rents and pays all expenses, including utilities, maintenance, repairs, insurance and the mortgage, and will continue to do so until the home sells. He didn't do that, and the bank foreclosed on the house in November, 2015.

The landlord further testified that she does not disagree that the tenant should receive back the security deposit, however submits that any monetary order should be enforced against the husband.

Analysis

The *Residential Tenancy Act* is clear with respect to security deposits: a landlord must return a security deposit or pet damage deposit in full to a tenant within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the tenant sent to the landlord (husband) a forwarding address in writing by registered mail on August 28, 2015. The *Act* states that documents served in that manner are deemed to have been served 5 days later, which in this case would be September 2, 2015. I have reviewed the registered mail documents provided by the tenant, and find that the tenant sent each of them to the same address of the landlord (husband). The tenant testified that 2 of the 3 letters were returned to the tenant unclaimed but the landlord (husband) received the first letter, and considering the evidentiary material as well, I accept that testimony.

I also refer to Residential Tenancy Branch Policy Guideline #12, which states, in part:

11. DEEMED SERVICE

The Legislation deems that a document not served personally, has been served a specified number of days after service:5

- if given or served by mail, on the fifth day after mailing it
- if given or served by fax, on the third day after faxing it
- if given or served by attaching a copy of the document to a door or other place, on the third day after attaching it
- if served by leaving a copy of the document in a mail box or mail slot, on the third day after leaving it.

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Deemed service applies to all types of documents not personally served. Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In the circumstances, I am satisfied that the landlords have not returned any portion of the security deposit to the tenant and the tenant has established a claim for double, or \$900.00.

With respect to the landlord's testimony that the obligation under the Separation Agreement of the landlords is that the husband will bear all responsibility, that is an issue between the landlords. The contract relevant to this application is the tenancy agreement which names both landlords.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$900.00.

This order is final and binding and may be enforced.

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 07, 2016

Residential Tenancy Branch

