



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for: unpaid rent and utilities; to keep the Tenants' security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee from the Tenants.

The Landlord, the male Tenant, and the mother of the male Tenant appeared for the hearing. However, only the male Tenant and Landlord provided affirmed testimony. The hearing process was explained and no questions were asked of how the proceeding would be conducted.

The male Tenant confirmed receipt of the Landlord's Application and documentary evidence by registered mail which had been sent by the Landlord to the rental unit address and forwarded to the male Tenant by Canada Post to his forwarding address.

The Landlord testified that she had served a separate copy of the Application, the Hearing Package and the documentary evidence to the female Tenant, also to the rental unit address. The Landlord testified that this had also been forwarded to the female Tenant's forwarding address by Canada Post even though she was unable to locate the Canada Post Tracking number during the hearing.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the female Tenant was deemed served with the required documents pursuant to Section 90(a) and Section 89(1) (c) of the Act.

Preliminary Evidence and Findings

The parties had indicated in their documentary evidence that they wanted to resolve this dispute through the retention of the security deposit paid for this tenancy. Therefore, at the start of the hearing, I asked the parties if they wanted to proceed with resolution in this manner. As a result, I obtained the following information from the parties before I allowed the parties to engage into resolution between them.

The parties confirmed that this tenancy for the rental unit started in February 2015 between the Landlord and the female Tenant. The female Tenant paid rent in the amount of \$1,015.00 on the first day of each month. The female Tenant also provided to the Landlord \$507.50 as a security deposit and \$100.00 as a pet damage deposit.

The male Tenant came into the tenancy in March 2016, at which points the previous tenancy agreement was terminated and a new one was signed showing both Tenants and the Landlord on the agreement. Rent under the signed agreement was payable by the Tenants in the amount of \$1,095.00 on the first day of each month.

The Landlord testified that the security deposit was transferred to the new tenancy and no further amounts were paid. The Landlord referenced the signed tenancy agreement showing the amount of the security and pet damage deposit that was transferred. The Landlord stated that the pet damage deposit amount of \$50.00 on the tenancy agreement was incorrect and should have been \$100.00.

The Landlord testified that at some point in the tenancy, the female Tenant abandoned the rental unit and the male Tenant then provided written notice to end the tenancy at the end of February 2017. None of the Tenants provided the Landlord with a forwarding address in writing.

The Landlord disclosed a lengthy monetary claim against the Tenants for damage to the rental unit and rekeying of locks for a total of \$1,961.55. However, the Landlord was willing to accept the Tenants' security and pet damage deposits in the amount of \$607.50 in full satisfaction of her monetary claim.

The Landlord stated that she was unsure of whether she could accept the male Tenant's consent because the monies had been paid by the female Tenant. The Landlord was then informed of the following provisions of the Act.

Section 38(4) (a) of the Act allows a landlord to retain an amount from the security or pet damage deposit if after the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or an obligation of the tenant.

In addition, 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.

In this case, I accept that the female Tenant had paid a total of \$607.50 as a security deposit and a pet damage deposit which had been transferred to the tenancy that was entered into in March 2016. The second tenancy agreement detailed both the female and male Tenants as parties to the agreement and shows the deposit amounts in the same tenancy agreement. Therefore, I find that the male Tenant and female Tenant were Co-tenants on the same tenancy agreement.

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 same principals would apply with respect to the Landlord's obligation in dealing with the Tenants' security deposit at the end of the tenancy.

A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a 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 unpaid rent or damages, or may apply for arbitration for return of the deposit.

Based on the foregoing, I find the male Tenant has authority under the signed tenancy agreement as a Co-tenant to give the Landlord written consent to keep the deposits paid for this tenancy, irrespective of who they were paid by.

Conclusion

Pursuant to the Act, the male Co-tenant gave written consent to the Landlord to keep the security and pet damage deposits paid for this tenancy of \$607.05 in order to satisfy the Landlord's monetary claim in full. This file is now closed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 28, 2017

Residential Tenancy Branch