Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF, SS

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of that amount. The Landlord also sought an Order that he be allowed to serve the Tenant in a different manner than required under the Act however, at the hearing the Landlord did not advance this claim and as a result, it is dismissed with leave to reapply.

The Landlord's application set out the names of two tenants, however, he admitted that he only served one of them (S.M.) with a copy of the Application and Notice of Hearing (the "hearing package"). Section 59 of the Act requires an applicant to serve ***all*** Respondents to a dispute resolution proceeding. As the other tenant, R.R., was not served with a copy of the Landlord's hearing package, the style of cause is amended to remove him as a Party in these proceedings.

The Landlord said he served the Tenant, S.M., with the hearing package by registered mail on April 8, 2011 to a forwarding address provided by her. However, the hearing package was returned to the Landlord with a notation that "the recipient was not located at the address provided." The Landlord said he left a text message for the Tenant advising her that the hearing package (and a partial refund) had been returned but he said he got no response from the Tenant. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on November 5, 2010 and ended on April 1, 2011 when the Tenant move out. Rent was $700.00 per month. The Tenant paid a security deposit of $350.00 at the beginning of the tenancy. The Landlord said he did not complete a move in or a move out condition inspection report.

The Landlord said the carpets in the rental unit were clean at the beginning of the tenancy but that the Tenant left them very dirty at the end of the tenancy. Consequently, the Landlord sought carpet cleaning expenses of $100.00. The Landlord also said that the Tenant did not return her key to the rental unit at the end of the tenancy and as a result, the Landlord claimed that he had to replace the lock at a cost to him of $50.00. The Landlord said he sent a money order in the amount of $150.00 to the tenant, R.R., (in the hearing package sent to the Tenant) which represented the balance of the security deposit. This was also returned to him with the hearing package.

Analysis

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he cannot keep any of the security deposit to pay for those damages but must return it to the Tenant within 15 days of the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later). I find that the Landlord did not complete a move in or a move out condition inspection report and therefore I find that the Landlord is not entitled to make an application to keep the Tenant's security deposit but must return it. Consequently, this part of the Landlord's application is dismissed without leave to reapply.

Section 21 of the Regulations to the Act says that "a condition inspection report completed in accordance with the Act and regulations is evidence of the state of repair and condition of the rental unit on the date of the inspection unless there is a preponderance of evidence to the contrary." Consequently, a condition inspection report is often the best evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she is responsible for leaving a rental unit unclean at the end of the tenancy.

The Landlord argued that he would not have incurred carpet cleaning expenses if the carpet had not been dirty. Even if I accept this argument, I find that there is no evidence that the Tenant was responsible for soiling the carpets. In other words, there is no evidence that the carpets were reasonably clean at the beginning of the tenancy or if they were already dirty. Furthermore, the Landlord provided no evidence that he

incurred expenses to change a lock as he claimed. Consequently, I find that there is insufficient evidence to support the Landlord's claims for carpet cleaning and lock replacement expenses and they are dismissed without leave to reapply.

Pursuant to s. 39 of the Act, if the Tenant(s) do(es) not provide the Landlord with a valid forwarding address in writing within 1 year of the end of the tenancy, the Tenants' right to the return of the security deposit will be extinguished and the Landlord will be entitled to keep it.

Conclusion

The Landlord's application for an Order that he be allowed to serve the Tenant in a different manner than required under the Act is dismissed with leave to reapply. The balance of the Landlord's application is dismissed without leave to reapply. 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: July 19, 2011.

Residential Tenancy Branch