Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants seeking a refund of their security deposit and pet damage deposit.

The hearing is also to deal with a cross application by the landlord to keep the deposits and for a monetary order for cleaning and loss of rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the tenant entitled to a refund of the security deposit and pet damage deposit?

Is the landlord entitled to monetary compensation for cleaning and loss of rent?

Background and Evidence

The tenancy began on July 1, 2013 with rent of $1,600.00 per month. No written tenancy agreement was signed by the parties. However, the landlord testified that a parent of the co-tenants had verbally agreed that the tenants would sign a one-year fixed-term tenancy agreement. The landlord testified that, when the tenants arrived they paid a security deposit of $800.00 and pet damage deposit of $75.00, but did not sign any written fixed-term tenancy agreement.

On July 15, 2013, the tenant left a written Notice in the landlord's mailbox stating that the tenant would be moving out by the end of August 2013. A copy of the tenant's Notice is in evidence. The tenant moved on August 22, 2013. In evidence is a copy of a

written note dated August 22, 2013 with the tenant's forwarding address and a request that the landlord return their security and pet damage deposit.

The tenant testified that the landlord did not return the deposits. The tenant is therefore requesting a monetary order for double the security deposit and pet damage deposit, on the basis that the landlord failed to refund their deposits within the 15-day deadline.

The landlord acknowledged that they did not refund the tenant's security and pet deposits. Copies of communications between the parties are in evidence confirming that the landlord refused to refund the deposits.

The landlord testified that the tenant left the rental unit in a state that was not reasonably clean as required under the Act and the landlord seeks compensation for cleaning. Submitted into evidence in support of the landlord's claim were copies of invoices and photos. No move-in and move-out condition inspection reports were completed by the parties at the start and end of the tenancy.

The landlord testified that, although the tenant had verbally committed to a fixed term tenancy for a one-year period, the tenant left near the end of August 2013.

The landlord testified that the tenants had clearly committed to a one-year fixed term and the tenant’s early termination of the tenancy agreement violated the fixed term.

The tenant did not agree with the landlord’s monetary claims. The tenant testified that they did not sign a fixed-term lease agreement and they left the rental unit in a cleaner condition than it was in when they originally moved in. The tenant pointed out that the landlord did not conduct any move-in and move-out condition inspection reports.

Analysis

Tenant’s Application

> Section 38 of the Act deals with rights and obligations of landlords and tenants in regard to the return of the security and pet damage deposits. Section 38(1) states that, within 15 days of the end of the tenancy and receipt of the tenant’s forwarding address the landlord must either repay the deposits, as provided under subsection 8, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> I find that the landlord was in possession of the tenant’s security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that, because the tenancy was ended and the forwarding address was given to the landlord shortly thereafter, the landlord should either have returned the deposit,

or made an application for dispute resolution within the following 15 days in compliance with the Act.

However, in this instance, I find that the landlord retained the security and pet damage deposits after the end of August 2013, and failed to make an application for a claim against the deposits until February 6, 2014, which was beyond the fifteen-day deadline.

Section 38(6) states: If a landlord does not comply with subsection (1), the landlord:

(a) may not make a claim against the security or pet damage deposit, and

(b) must pay the tenant double the amount of the deposits

I find that section 38(6)(b) imposes a compulsory requirement that the landlord must pay double the ***amount of the deposit*** under these circumstances.

I find that the total amount of both deposits at the end of the tenancy was $875.00. I find that, because fifteen days had expired without the landlord meeting its responsibility under section 38(1) of the Act, the tenant would be entitled to double this amount. This would be a total refund of $1,750.00.

Landlord's Monetary Claims

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit‘s condition as it was when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party’s signatures.

Conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that neither a move-in condition inspection report, nor move-out condition inspection report were ever completed. Moreover, the tenant disputes the landlord’s testimony that the rental unit was not returned to the landlord in a reasonably clean state.

I find the failure of the landlord to comply with the Act by properly conducting a joint inspection and completing the move-in and move-out condition inspection reports has hindered the landlord’s ability to prove that the unit was not reasonably clean at the end of the tenancy. Given the above, I find that the landlord’s monetary claim for the cleaning costs must be dismissed for insufficient evidentiary proof.

With respect to the landlord's claim for loss of September 2013 rent, I find in order to meet element 2 of the test for damages, the landlord must prove that their losses resulted from the tenant’s violation of the Act or agreement.

With respect to the question of whether the landlord and tenant had entered into an enforceable fixed-term tenancy that would not expire until a year had passed, I look to the Act.

Section 13(2) of the Act states that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a) the standard terms;

(b) the correct legal names of the landlord and tenant;

(c) the address of the rental unit;

(d) the date the tenancy agreement is entered into;

(e) the address for service and telephone number of the landlord or the landlord's agent;

(**f) the agreed terms in respect of the following**:

(i) the date on which the tenancy starts;

(ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) if the tenancy is a fixed term tenancy,

(A) the date the tenancy ends, and

(B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date; (My emphasis)

I find that the landlord has not sufficiently proven that this verbal tenancy agreement was for a fixed term because it would not be possible to confirm the specific nature of the fixed term. I find that, even if I accept that the parties did reach a verbal agreement that the tenancy was for a fixed term ending on a particular date, I find that this purported tenancy term would fail to adequately meet the criteria required under section 13(f)(iii) of the Act to be a valid and enforceable term.

Accordingly, I find that these parties did not enter into a valid and enforceable fixed-term tenancy under the Act expiring on a specific date. I find that, under the Act, this verbal tenancy is considered to be a “month-to-month” tenancy.

Section 45 of the Act permits a tenant to end a month-to-month tenancy by giving the landlord notice in writing to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Given the above, I find that the tenant's July 15, 2013 Notice terminating their tenancy agreement effective at the end of August 2013 was in compliance with the requirements under section 45 of the Act the Act and was not in violation of either the tenancy contract nor the Act.

Accordingly, I find that the landlord is not entitled to be compensated for their loss of rent for September 2013 and this portion of the monetary claim must also be dismissed.

Based on the evidence, I hereby dismiss the landlord's application in its entirety without leave.

I hereby grant the tenant a monetary order for $1,800.00, comprised of $1,600.00 for double the security deposit, $150.00 for double the pet damage deposit and the $50.00 cost of the application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and is granted a monetary order for double the security deposit and pet damage deposit. The landlord is not successful in the cross-application for monetary compensation and the landlord's claim is dismissed without leave.

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: May 26, 2014

Residential Tenancy Branch