Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND MNSD FF

Introduction

This Dispute Resolution hearing is being held to deal with an Application by the tenant for a monetary order for the return of double the security and pet damage deposits.

The hearing was also to deal with a cross application by the landlord for a monetary order against the tenant for money owed or compensation for damage or loss under the Act and to retain the security deposit in satisfaction for the amount claimed.

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.

Preliminary Matter

On March 26, 2014, the landlord filed a cross application seeking damages of $3,070.23 against the tenant. The tenancy ended on December 31, 2011.

Pursuant to section 60(1) of the Act, copied below, if the claimant fails to make application within two years of the date the tenancy ends, a claim arising under this Act or the tenancy agreement ceases to exist.

Latest time application for dispute resolution can be made

60 *(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*

(2) Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Given the above, I find I have no jurisdiction, nor authority, to hear a monetary claim by the landlord against the tenant because this tenancy had ended more than two years before the landlord's application was submitted.

Remaining Issue(s) to be Decided

Is the tenant is entitled to the return of double the security and pet damage deposit?

Background and Evidence

The following facts are not under dispute:

- The tenancy began in October 2010,
- Rent was $1,400.00 per month,
- A $700.00 security deposit and $350.00 pet damage deposit had been paid,
- The tenant vacated the rental unit on December 31, 2011,
- A written forwarding address was provided to the landlord on April 25, 2012,
- The landlord did not refund the tenant's security deposit and pet damage deposit.

The landlord testified that the security deposit was not refunded because the parties had reached a verbal agreement that the landlord would retain the tenant's security deposit and pet damage deposit for damages to the suite.

Analysis

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this **in writing** at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to merely keep the deposit.

However, a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute

resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant.

The landlord must either make the application or refund the security deposit within 15 days after the tenancy had ended and receipt of a written forwarding address.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days, the landlord may not make a claim against the deposit, and must pay the tenant double the amount of the deposit.

In this instance, I find that the tenant had paid $700.00 security deposit and $350.00 pet damage deposit and provided a written forwarding address to the landlord on April 25, 2012. I find that the landlord had 15 days from that date to either refund the deposits or make an application to keep them. I find that the landlord did neither , until March 26, 2014 when the landlord made an application for Dispute Resolution.

Accordingly I find that the tenant is entitled to compensation in the amount of $2,150.00 comprised of $1,400.00 representing double the security deposit, $700.00, representing a refund of double the pet damage deposit and the $50.00 cost of the application.

I hereby grant a monetary order in favour of the tenant for $2,150.00 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.

The landlord's claim was not heard as the claim was made beyond the two-year deadline under the Act and I lacked jurisdiction.

Conclusion

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: April 07, 2014

Residential Tenancy Branch