Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF
O, FF

Introduction

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

The Tenants' agent and the Landlord appeared for the hearing and provided affirmed testimony and confirmed receipt of each other's Applications.

Preliminary Issues

The details section of the Tenants' Application specifically requests the return of the security and pet damage deposit. As a result, in agreement with the Tenant's agent, I amended the Tenant's Application to include a request for the return of the pet damage and security deposit under the authority afforded to me by Section 64(3) (c) of the Act.

The Tenant provided written evidence which the Landlord confirmed receipt of. However, the only written evidence provided by the Landlord for his $9,182.26 monetary claim was evidence in relation to the service of his Application by registered mail.

The Landlord referred to a previous hearing which was conducted on April 29, 2014 (the file numbers for which appear on the front page of this decision), which heard Applications from both parties for similar matters. The arbitrator dealt with the certain aspects of both parties' claims but dismissed the monetary claim of both parties with leave to re-apply. In relation to the Landlord's Application for the previous hearing, the Landlord had failed to provide a detailed breakdown of his monetary claim and the

Arbitrator determined that the Tenants had not been put on sufficient notice for the Landlord's monetary claim to be heard.

In this hearing, the Landlord started to refer to written evidence which he had submitted with his previous Application. The Landlord was informed that written evidence submitted with a previous Application has to be made available again for a new hearing by an Applicant; the Landlord was not aware of this despite being given written instructions about the service of evidence when making the second Application.

In addition, the Landlord had taken the findings of the Arbitrator for the decision of the last hearing and only submitted a detailed breakdown of his monetary claim. While, this is sufficient to put the Tenants on notice of the Landlord's monetary claim, an Applicant is still responsible for serving documentary evidence they intend to rely upon to support their claim, to the Residential Tenancy Branch and the Respondent prior to the hearing in accordance with the Rules of Procedure. This is further are outlined in documents provided to an Applicant when making an Application. The Landlord appeared to be confused about his requirement to submit written evidence to prove his claim.

Due to the circumstances and the potential confusion the Landlord was under about the making of the second Application, I am prepared to give the Landlord leave to re-apply for his monetary claim so that the Landlord can submit his documentary evidence in accordance with the Rules of Procedure.

However, I find that the Tenant's Application should not be disadvantaged by the failure of the Landlord to provide written evidence for his Application and as a result, the hearing continued to hear the Tenant's Application for the return of the deposits.

Issue(s) to be Decided

- Are the Tenants entitled to the return of their security and pet damage deposits (the "deposits")?

Background and Evidence

The parties agreed that this tenancy started on June 1, 2010 for a fixed term of one year after which the tenancy continued on a month to month basis. A written tenancy agreement was completed and the Tenants paid a security deposit and a pet damage deposit in the amount of $1,825.00 each to the Landlord on April 22, 2010 which the Landlord still retains. Rent for the tenancy was established in the amount of $3,650.00 payable on the first day of each month.

The Tenants' agent explained that the Tenants vacated the rental suite at the end of April, 2014 as a result of the findings of the previous decision. On May 2, 2013 the Tenants provided their forwarding address to the Landlord on a written piece of paper; this address was the same one as used by the Landlord on his Application to serve the Tenants with the copy of his Application by registered mail.

The Landlord testified that he had not received a forwarding address from the Tenants to date. When the Landlord was asked to explain how he was able to obtain the address used on his Application, the Landlord then submitted that he had received an address from the Tenants in writing but could not recall the exact date.

The Landlord testified that he had not returned the Tenants' deposits because the Tenants owed him for unpaid rent, unauthorised repairs and damages to the rental unit and bogus claims for repairs completed to the property for which he was provided receipts.

The Tenant's agent disputed the oral allegations of the Landlord. For the above reasons the Landlord had not provided any supporting evidence to corroborate these allegations.

Analysis

Section 38(1) of the Act states that within 15 days after the later of the date the tenancy ends and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must return a Tenant's deposit or make an Application to keep it.

The Landlord was unable to confirm the date the Tenants had provided their forwarding address and therefore I rely on the oral testimony of the Tenants' agent that the Tenants provided the Landlord with a forwarding address in writing on May 2, 2014 in accordance with the Act.

The Landlord made his Application to keep the Tenants' deposits, amongst other issues, on May 14, 2014. Therefore, I find that the Landlord made his Application requesting to keep Tenants' deposits within the allowable 15 day time limit provided by the Act.

However, as the Landlord did not provide sufficient evidence to justify why he should continue to hold on to the deposits or be allowed to keep them, I find that the Tenants' deposits must be returned forthwith.

As the Landlord made his Application to keep the Tenants' deposits within the time limits of the Act, there was no requirement for the Tenants to make an Application as such a return of a Tenants' deposits can be ordered for return without the need of a Tenant making an Application. Therefore, I am not willing to award the Tenants the filing fee for the cost of making their Application as this was not necessary.

Conclusion

For the reasons set out above, the Landlord must return the Tenants' deposits in the amount of $3,650.00 forthwith after receipt of this decision.

If the Landlord fails to return this amount to the Tenants, the Tenants are issued with a Monetary Order pursuant to Section 67 of the Act in the amount of **$3,650.00** which must be served to the Landlord and may then be filed and enforced in the Provincial Court (Small Claims) as an order of that court.

The Landlord's Application to retain the Tenants' deposits and recover his filing fee from the Tenants is dismissed.

The remainder of the Landlord's Application is dismissed **with** leave to re-apply. The Landlord is cautioned regarding the Rules of Procedure in relation to the service of any written evidence the Landlord intends to rely on.

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: October 01, 2014

Residential Tenancy Branch