

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an order to retain all or part of a Security Deposit paid by the tenant, and for an Order of compensation for damage or loss under the *Residential Tenancy Act*. The landlord and tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issue to be determined, based on the testimony and the evidence is:

- Is the landlord entitled to damages for loss under the *Act*, regulation or tenancy agreement?

The burden of proof is on the landlord to establish that the tenant is responsible for damages for a breach of a term of the *Act*, regulation or tenancy agreement.

Background and Evidence

The parties testified that the tenant had previously been awarded double the amount of the security deposit after a hearing under the *Residential Tenancy Act*.

The tenant looked at the unit on February 9, 2009 which was under renovation and knew that the unit would not be available until May 1, 2009. The tenant paid \$275.00 with her "Application for Rental Accommodation" and the landlord testified that a credit report was requested to ensure that the tenant would be approved as a tenant. On February 11, 2009, the landlord notified the perspective tenant that she had been approved for tenancy of that unit for May 1, 2009.

In April, 2009, the tenant advised the landlord that she did not want to move into the unit and requested her deposit be returned to her. This request was followed up with a letter, which was entered into evidence, dated April 7, 2009 and included an address to send the deposit to.

The landlord testified that the general business practice of the landlord is to take a non-refundable holding fee, get a credit report and if approved, contact the tenant and ask for the remainder of the security deposit. The application fee would then be applied to the security deposit, the parties would complete a move-in inspection and the landlord would provide the tenant with the rules and regulations for the unit and ensure that the hydro was transferred to the name of the new tenant. At that time, a Residential Tenancy Agreement would be signed by both parties.

A written tenancy agreement was never signed by the parties.

The landlord submitted into evidence a document entitled "Money Owed or Compensation for Damage" which included an itemized statement of damages claimed from the tenant totaling \$1,196.47, which included advertising costs, security deposit and rent for May 1 to 14, 2009. The landlord provided receipts for advertising that ran continually.

Analysis

In regards to the deposit paid by the tenant on February 9, 2009, Section 15 of the *Residential Tenancy Act* states as follows:

- 15** A landlord must not charge a person anything for
- (a) accepting an application for tenancy,
 - (b) processing the application,
 - (c) investigating the applicant's suitability as a tenant, or
 - (d) accepting the person as a tenant.

Also, Section 20(a) states that:

- 20** A landlord must not do any of the following:
- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;

Notwithstanding the application signed by the parties which clearly states that the deposit is non refundable upon approval of the application by the landlord, I can only find that due to Sections 15 and 20, the money paid with that application is defined as a security deposit. Further, the landlord testified that the money would be applied to the security deposit when the tenancy agreement was signed.

Section 5 states that:

- 5** Landlords and tenants may not avoid or contract out of this *Act* or the Regulations.

The four-part test for damages that must be addressed by the landlord are:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulations or tenancy agreement;

3. The value of the loss or damage; and
4. What steps were taken to mitigate the loss or damage.

Based on the evidence adduced, I cannot find that the landlord suffered a loss or damage resulting from the tenant's violation of the *Act*. Nor can I find that the landlord is entitled to an award for damages for breach of a term in a tenancy agreement since that tenancy agreement does not exist.

Rules imposed by a landlord on an Application for Rental Accommodation or a Tenancy Agreement outside the *Act* cannot be enforced by a Dispute Resolution Officer and have no force or effect.

Conclusion

The landlord's application 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: January 27, 2010.

Dispute Resolution Officer