Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prime Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that they served each tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on March 25, 2014. The landlord supplied the registered mail receipts showing the tracking numbers for the registered mail and that they used the address provided on the tenants' rental application.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to monetary compensation, authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application?

2. Does this dispute fall under the jurisdiction of the Residential Tenancy Act?

Background and Evidence

The landlord submitted that each tenant completed a rental application on February 28, 2014, providing personal information such as occupation, income, banking, personal property ownership and references. The tenants also gave permission to the landlord to perform a credit check. As part of the rental application process, the tenants were required to pay a security deposit, which they did when they paid the landlord $525.

The tenants never signed a tenancy agreement; however, the landlord submitted that the tenancy was to start on April 1, 2014, for a fixed term and monthly rent of $1050.

The landlord submitted that the tenants promised to take occupancy of the rental unit in question; however, the tenants never took occupancy or pay any monthly rent. The landlord further submitted that the tenants became abusive to the landlord's employee when requesting their security deposit returned on March 10.

The landlord's monetary claim is $1050 for loss of rent revenue for April and the filing fee of $50, and the landlord seeks to retain the tenants' security deposit in partial satisfaction of a monetary award.

Analysis

In order for the applicant/landlord to succeed in this application, the applicant/landlord must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

Residential Tenancy Policy Guideline 27 states that the Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlords, tenants and strata corporations.

In the case before me, I find the applicant/landlord provided insufficient evidence that a consensus as to the terms of the tenancy, such as to the start date of the tenancy or the terms and condition, was ever agreed upon by the parties. Further, although the tenants paid a security deposit, this was a requirement for the rental application, and the tenants never paid monthly rent.

As such, I find that, while the parties contemplated entering into a tenancy, a tenancy agreement was never formed or created between these two parties. A rental application providing information to a landlord to establish creditworthiness is not the same as a tenancy agreement.

As a result, I find upon a balance of probabilities that a tenancy agreement did not exist between the parties and I therefore decline to find jurisdiction to resolve this dispute. As I have declined jurisdiction, I have not ordered the applicant/landlord to return the tenants' security deposit.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

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 12, 2014

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Residential Tenancy Branch