



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting him to retain part of the security deposit. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on October 4, 2007 and ended on September 30, 2009. Monthly rent was set at \$1,700.00 per month and an \$850.00 security deposit was paid at the outset of the tenancy. During the tenancy two fines were levied against the unit by the strata corporation, totalling \$100.00. At the end of the tenancy the tenant agreed in writing that the landlord could deduct the cost of those fines from his security deposit. The tenant argued that he had not been given a copy of the strata rules or a copy of warnings about violations of those rules and therefore should not have to pay the fines.

The landlord testified that when the tenant vacated the rental unit he had not shampooed the carpets or adequately cleaned the unit. The landlord provided photographs showing the condition of the rental unit. The landlord claimed that he paid a cleaning service \$270.00 to shampoo the carpets in the unit and clean the unit. A copy of the invoice for that payment was not entered into evidence. The landlord

insisted that he performed a condition inspection of the unit at the end of the tenancy but that the report had been lost. The tenant argued that the landlord had not completed a condition inspection report either at the beginning or the end of the tenancy and therefore his claim against the security deposit was extinguished pursuant to sections 24(2) and 36(2) of the Act. The tenant acknowledged that he did not shampoo the carpets at the end of the tenancy, but testified that he vacuumed and dusted the rental unit. The tenant disputed the amount claimed by the landlord as he found it to be exorbitant for shampooing the small amount of carpet that was in the unit and in light of the minimal cleaning that was required.

Analysis

First addressing the tenant's argument that the landlord's right to claim against the deposit has been extinguished, I agree that it has been extinguished as the landlord acknowledged that he did not perform a condition inspection of the unit and generate a report at the outset of the tenancy. However, while the Act provides that the landlord's right to claim against the deposit is extinguished, the Act does not prohibit the landlord from making a monetary claim against the tenant and section 72(2)(b) of the Act permits the landlord to deduct a monetary award from the security deposit. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord.

Although the tenant may not have been given a copy of the strata rules or a copy of the warnings that he was violating those rules, the tenant still chose to authorize the landlord in writing to retain part of his security deposit. I find that this authorization by the tenant estops him from now making a claim that he should not be held liable for the cost of the fines. I award the landlord \$100.00 as the cost of the fines.

Residential Tenancy Policy Guideline #1 provides that when a tenant has resided in a rental unit for at least one year, he is obligated to shampoo the carpets at the end of the tenancy. As this tenancy has extended well beyond one year I find that the landlord is entitled to recover the cost of shampooing the carpets. In the absence of an invoice

showing how much was actually spent on carpet cleaning, I find that \$100.00 will adequately compensate the landlord for the cost of carpet cleaning and I award the landlord that sum. I further find that the rental unit required some cleaning, although I find that on the evidence that cleaning was minimal. I find that the landlord may recoup the cost of one and one half hours of cleaning at a rate of \$20.00 per hour and I award the landlord \$30.00 for cleaning. I find that the landlord is also entitled to recover the \$50.00 paid to bring this application.

Conclusion

I find that the landlord has established a claim for \$280.00 which represents the \$100.00 strata fines, \$100.00 for carpet cleaning, \$30.00 for general cleaning and recovery of the \$50.00 filing fee paid to bring this application. I order that the landlord retain \$ from the \$850.00 deposit and the \$15.91 in interest which has accrued to the date of this judgment and I order the landlord to return the balance of \$585.91 to the tenant forthwith. I grant the tenant an order under section 67 for the balance due of \$585.91. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: February 05, 2010
