

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting him to retain a portion 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 landlord seeks to recover the cost of dry cleaning drapes at the end of the tenancy. The parties agreed that there is no term in the tenancy agreement whereby the tenants are required to have the drapes professionally cleaned during or at the end of the tenancy. The landlord testified that the drapes were not soiled at the end of the tenancy but that for hygienic reasons, the landlord requests tenants to have drapes dry cleaned. The landlord served the tenants with two requests to have the drapes dry cleaned and testified that because the tenants did not respond in the negative to these requests, there was an assumption that the parties had an agreement. The tenants took the position that they were under no contractual obligation to clean the drapes.

Analysis

In order to establish his claim, the landlord must prove either that the tenants were contractually obligated to have the drapes cleaned or that they caused the drapes to be soiled to a degree that required professional cleaning. I find that the tenants' lack of response to the landlord's instruction to dry clean the drapes does not constitute a contractual agreement. The landlord cannot unilaterally impose a contractual term upon

the tenants. As the landlord has confirmed that the drapes were not soiled, I find that the tenants cannot be held liable for the cost of cleaning the drapes.

Conclusion

The claim is dismissed. I order the landlord to return the \$118.65 he withheld from the security deposit to the tenants forthwith. I grant the tenants an order under section 67 for \$118.65. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: March 12, 2010
