

DECISION

Dispute Codes FF, MND, MNDC, MNSD, SS

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$423.50; the applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

Background and Evidence

The applicants testified that:

- They verbally requested that the tenants participate in a move-out inspection however she did not do so.
- The tenant did not leave the rental unit in clean condition at the end of a tenancy and as a result they had to clean at a cost of \$157.50.
- Extra cleaning was needed because of the fact that a lot of items had nicotine staining.
- The carpets in the rental unit were also left in need of cleaning a cost of \$73.50.
- They had originally told the tenant that they would be replacing the carpets however due to circumstances they decided clean them instead.

- Due to nicotine staining the ceilings had to be painted in the rental unit a cost of \$200.00.

The applicants are therefore requesting that they be allowed to keep the full security deposit plus interest towards this claim and that a monetary Order be issued for the difference.

The respondent testified that:

- She thoroughly cleaned the rental unit when she vacated, except behind the fridge and stove as she was unable to move those, and the curtains as she did not clean those.
- The landlord did not do the move-out inspection with her, or even offer to do a move-out inspection.
- The rental unit had not been painted in the nine years she lived in the unit.
- This was not a no smoking unit; however she seldom smoked in the unit anyway as she had a very nice deck on which to smoke.

The tenant therefore does not believe that any of the landlords claim is justified, other than a small amount for cleaning the curtains, and cleaning behind the fridge and stove. She is willing to allow \$33.33 to cover those costs.

Analysis

The landlord is required to insure that a move-out inspection is done at the end of the tenancy, and although they claim that the tenant failed to participate in the inspection, (a claim that the tenant denies), the landlords did not comply with the requirements of the Residential Tenancy Act as they never proposed a second opportunity on the approved

form, as required under section 17 of the Residential Tenancy Regulations.(Copied below)

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

Since the move-out inspection was not done in the presence of the tenant it is basically the landlord's word against the tenants as to the condition of the rental unit. Therefore it is my decision that the landlords have not met the burden of proving that the rental unit was not left in a reasonably clean condition.

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

The claims for cleaning and carpet cleaning are therefore denied.

I also deny the claim for painting. Landlords can expect to have to paint a rental unit every three to four years, and in this case this rental unit has not been painted for at

least nine years. Therefore it is my finding that the need for painting is a result of normal wear and tear and cannot be charged to the tenant.

I also deny the claim for the filing fee.

Conclusion

The landlord's application is dismissed, except for the \$33.33 that the tenant has agreed to. I have therefore issued an order for the landlord to return the full security deposit of \$395.00 plus interest of \$30.52, for a total of \$425.52 less the \$33.33, for a total order of \$392.19.

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: May 31, 2010.

Dispute Resolution Officer