

DECISION

Dispute Codes MNDC, MNSD, MND, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to the return of double her security deposit?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2009 and ended on November 29, 2009. The parties further agreed that at the outset of the tenancy the tenant paid a \$400.00 security deposit and that the tenant gave the landlord notice advising that she would be vacating the rental unit on November 29, which notice was accepted by the landlord. The parties further agreed that the landlord did not request that the tenant participate in a condition inspection of the rental unit at the beginning or the end of the tenancy.

The tenant testified that on November 29 she had moved substantially all of her belongings from the rental unit and returned to the rental unit to discover that the landlord, who resides on the upper floor of the residential property, had admitted new tenants to the rental unit. The tenant testified that she had arrived at the rental unit prepared to clean the unit and had with her a steam cleaning machine to use on the carpets. The tenant telephoned the police, who attended at the rental unit. The tenant testified that she gave a police officer her keys and her written forwarding address to the

rental unit to give to the landlord, who was standing inside the unit and that she witnessed the officer giving the items to the landlord. The tenant testified that she left without cleaning the rental unit because the new tenants were already in the process of moving into the unit.

The landlord testified that in the morning of November 29, the tenant's mother telephoned the landlord to advise that the tenant had vacated and that the tenant was prepared to surrender the keys. The tenant testified that her mother did not contact the landlord. The landlord did not have keys to the rental unit, but was able to access the unit by going through a shared laundry room. The landlord testified that she permitted the new tenants to begin moving in because she understood that the tenant would not be returning to the unit. The landlord acknowledged that the police gave to her the keys to the rental unit but denied that a written forwarding address was included with the keys. The landlord maintained that the first time she received the tenant's forwarding address was when she received the tenant's application for dispute resolution. The landlord testified that the tenant failed to clean the rental unit and that as a result, she had to clean the unit and pay for carpet cleaning to be done.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to act within 15 days, the landlord must pay the tenant double the security deposit. In the absence of corroborating evidence, I am unable to find that the tenant gave the landlord her forwarding address on November 29. The tenant bears the burden of proving on the balance of probabilities that the landlord received the forwarding address on November 29 and I find that she has not met that burden. The landlord is therefore not liable to pay the tenant double the security deposit.

I find that the landlord failed to conduct a condition inspection of the rental unit with the tenant at the end of the tenancy and therefore extinguished her right to make a claim against the security deposit pursuant to section 36(2) of the Act. I find that the landlord

permitted new tenants to take occupancy of the rental unit before the tenant had surrendered possession of the unit by returning keys to the landlord and thereby deprived the tenant of the opportunity to clean the rental unit. I find that the landlord's claim for the cost of cleaning the unit must therefore be dismissed.

As the landlord has no claim against the security deposit, I order her to return the deposit to the tenant forthwith together with the \$50.00 filing fee the tenant paid to bring her application, as I find the tenant is entitled to recover that cost.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order under section 67 for \$450.00 which represents the security deposit and the \$50.00 filing fee. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 06, 2010
