



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

At the beginning of the hearing, counsel for the Tenant argued that the two parties named as Executors for the Deceased were not properly named as parties in this proceeding. Counsel claimed that although M.K. and C.B. were named as executors in the Deceased's last Will and Testament, they had not been appointed by the Supreme Court and did not accept that appointment in any event because the estate was allegedly insolvent. The Landlords argued that M.K. and C.B. were properly named because M.K. paid the rent for the Deceased during part his tenancy and both M.K. and C.B. removed items of the Deceased from the rental property allegedly causing damages.

I find that as of this point in time, the estate of the Deceased is the Tenant (as defined by s. 1 of the Act) however there is insufficient evidence as to who is legally authorized to represent that estate. I find that the payment of rent on behalf of a Tenant alone does not make an individual an agent or representative of a Tenant. I further find that the removal of items from a residential property does not make that person a representative of the Tenant. In other words, given that neither M.K. or C.B. are parties to the tenancy agreement and given that there is insufficient evidence that they are acting on behalf of the Deceased's estate, then I find that any action against M.K. and C.B. for removing items or causing damages falls outside the jurisdiction of the Act.

Conclusion

Consequently, the Landlords' application as against M.K. and C.B. is dismissed on the grounds that there is insufficient evidence to conclude that they are acting as the legal representatives for the Deceased's estate. The Landlords may reapply if they provide sufficient evidence that M.K. and C.B. are, in fact, acting as Executors. I also find that there is no jurisdiction under the Act to hear this dispute as against M.K. and C.B. for damages allegedly caused by them in their person capacities.

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: November 17, 2011.

Residential Tenancy Branch