



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, the interest and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on November 4, 2011, the landlord did not appear. The landlord filed documentary evidence for this hearing. I find the landlord has been duly served in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit held by the landlord?

Background and Evidence

The tenancy began on August 1, 2005. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$900.00 was paid by the tenant. The tenancy ended on October 31, 2010. On November 10, 2010, the landlord returned a portion of the tenants security deposit in the amount of \$444.57.

The tenant's agent testified that the landlord withheld \$235.20 of the security deposit to clean the drapes and is seeking compensation at double the amount as the landlord was not authorized to retain that money from the security deposit.

The tenant's agent testified that she completed the move-out inspection report on behalf of the tenant and there never was a discussion or agreement with the landlord about having the drapes cleaned.

The tenant's agent testified that on the move-out inspection report it is pre-typed \$2.00 per pleat + HST and she did not initial or checked off the term to show she agreed to pay for the cleaning of the drapes; she had checked off and initialled other items on the report, such as giving her consent to replace the kitchen floor and light bulbs. And in

any event the landlord did not provide the tenant a copy of the receipt to prove he actually had the drapes cleaned. Filed in evidence is a copy of the move-out inspection dated October 31, 2010.

The tenant's agent testified that in 2008 the tenant was told by a professional cleaner that the drapes would fall apart if they attempted to have the drapes cleaned as they were in poor condition.

The tenant's agent further testified that the tenant purchased new drapes for the rental unit and left the drapes she purchased behind. The tenant's agent stated the drapes did not require cleaning. Filed in evidence are photographs of the drapes on the day the move-out inspection was completed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The evidence of the tenant's agent was she did not authorize the landlord to retain \$235.20 for cleaning the drapes.

The drape column on the move-out inspection is not initialed by the tenant's agent or checked off.

The evidence of the tenant's agent was the drapes did not need cleaning when the tenant vacated the rental unit as the drapes were clean.

The move-in inspection report filed by the landlord indicates that the tenant agrees to leave the rental unit in the same condition when the tenant vacates the rental unit. In the report it says the drapes are to be "clean".

I find the landlord did not have the written consent of the tenant to keep a portion of the security deposit for drape cleaning. Therefore, I find the landlord has breached section 38 of the Act.

Section 38 (4) states: A landlord may retain an amount from a security deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

I find the tenant is entitled to the return of the security deposit held by the landlord in the amount of \$235.20.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$470.40, comprised of double the security deposit retained by the landlord (\$235.20) and the \$50.00 fee for filing this application.

The tenant is given a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: January 23, 2012.

Residential Tenancy Branch