



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation for damage or loss under the Act and to keep all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matter

In the details of dispute in the landlord's application it states they are seeking a review of a prior decision (January 11, 2012) awarding the tenants double the security deposit.

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I have no authority to grant the landlord's request to hear the issue of the security deposit as this matter was already heard at the hearing of January 09, 2012 and a decision was issued on January 11, 2012, awarding the tenants double the security deposit.

Additionally, section 80 of the Act sets out the time frames in which a Review of a decision can be applied for. The landlord did not file for a review as required by the Act. Therefore, I dismiss the landlord's request to change that decision.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss under the Act?

Background and Evidence

This tenancy commenced on August 15, 2010, as a 10 month fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of \$1,000.00 was due on the first day of the month. The tenants paid a security deposit of \$500.00 on August 1, 2010. The tenancy ended on October 31, 2011.

The landlord testified that on October 30, 2011, she called the tenants to schedule the move-out inspection on October 31, 2011, and the agreed time for the inspection was 1:00 p.m.

The landlord testified on October 31, 2011, she went to the rental unit at 8 a.m. to see how the cleaning was coming along and discovered there was still a lot of cleaning to do and the tenants were not at the rental unit. The landlord states she called the tenants and left a message regarding the cleaning and at 8:30 a.m. the tenant (AN) returned the call.

The landlord testified the tenant (AN) did not see what the concern was as they had until November 1, 2011, at 1:00 p.m. to have the rental unit cleaned. The landlord stated to the tenant (AN) that she was mistaken and referred the tenant to the tenancy agreement, which requires the tenant to be ready for move out by 1:00 p.m. on the last day of tenancy. The tenant (AN) told the landlord that the tenant (DN) was not home and he would not be able to be at the rental unit until the scheduled move-out inspection at 1:00 p.m.

The landlord testified the tenant (AN) asked her how much she would charge to clean the rental unit and the landlord told her she charges \$25.00 per hour. The landlord stated the tenant (AN) consented to that amount and gave her permission to start cleaning the rental unit.

The landlord testified the tenant (DN) showed up at the rental unit at 11:00 a.m. The landlord stated at 11:30 a.m. the move-out inspection was completed and the keys returned. The tenant (DN) was provided the opportunity to stay and finishing cleaning the items as discussed until 1:00 p.m. and the landlord left the rental unit.

The landlord testified when she came back to the rental unit at 1:00 p.m. the tenant (DN) was steam cleaning the carpets and the oven racks were still in the bath tub and the upstairs and downstairs bathroom still required to be cleaned. The landlord states she cleaned the remaining items, while the tenant (DN) continued to steam clean the carpets and she was there cleaning until 3:00 p.m.

The landlord states she spent four and a half hours cleaning and the agreement with the tenant (AN) was that she would be paid \$25.00 per hour. The landlord is seeking compensation for her loss in the amount of \$112.50.

The landlord testified the next day when she went to the rental unit the tenants did not take their garbage or a leaking oil jug. The new tenants disposed of those items and it cost \$37.50 for disposal which the new tenants were reimbursed. The landlord states she is seeking compensation in the amount of \$37.50 for this.

The landlord testified the new tenants spent an additional two hours cleaning the rental unit. The landlord states she compensated the new tenants \$50.00 for cleaning.

The tenant (DN) testified that the tenant (AN) never agreed to pay the landlord to help clean the rental unit.

The tenant (DN) stated he was at the rental unit by 10:00 a.m. and he would have been able to get all the cleaning completed without the help of the landlord. However, he contacted the new tenants and the new tenants wanted the carpets cleaned prior to them moving in. The tenant (DN) testified he was not responsible for cleaning the carpets, but he cleaned them anyway.

The tenant (DN) testified that the garbage and leaking oil jug were left by the previous tenants and they should not be responsible to compensate the landlord for the cost of disposing those items.

Analysis

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

The evidence of the landlord was the tenant (AN) returned her telephone message. The tenant (AN) thought they had until 1:00 p.m. on November 1, 2011 to clean the rental unit. The tenant (AN) informed the landlord that the tenant (DN) was not at home and was not expected to be at the rental unit 1:00 p.m. as that was the agreed upon time to complete the move-out inspection.

Section 37(1) of the Act states the tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends. In this case the tenancy ended on October 31, 2011, at 1:00 p.m.

The evidence of the landlord was the tenant (AN) asked her what she would charge to clean the rental unit, and the tenant (AN) consented to that hourly rate and gave the landlord permission to clean the rental unit. The evidence of the landlord was she spent two and a half hours cleaning the rental unit prior to the tenant (DN) arriving. The evidence was a move-out inspection was completed and the keys were returned. The landlord stated she gave the tenants until 1:00 p.m. to complete the cleaning.

The evidence of the tenant (DN) was no agreement was made with the landlord to pay her for the work she did to clean the rental unit and that she was not authorized to help.

In this case the landlord had firsthand knowledge of a telephone conversation she had with the tenant (AN), the tenant (AN) authorized the landlord to enter the rental unit and offered her compensation for cleaning which was required in order to have the rental unit ready for 1:00 p.m. move-out inspection.

The evidence of the tenant (DN) was second-hand information as he was not present when the tenant (AN) and landlord had the telephone conversation. The tenant (AN) did not attend this hearing to provide testimony, and the tenant (AN) did not provide any

written submission, such as an affidavit. The tenant (AN) was a co-tenant under the tenancy agreement and had the right to make independent decisions regarding the tenancy. Therefore, I find that the landlord did have permission and was promised compensation for work performed.

The evidence of the landlord was when she arrived back at the rental unit at 1:00 p.m. there was still a balance of items not cleaned as discussed at the move-out inspection.

The evidence of the tenant (DN) was he would have been able to clean the rental unit by 1:00 p.m. without the help of the landlord if he did not start steam cleaning the carpets. The tenant's evidence was they are not responsible to clean the carpets.

In this case the tenancy exceeded one year and it was the tenants' responsibility to ensure the carpets were cleaned prior to 1:00 p.m. on October 31, 2011. The landlord was entitled to have professional cleaners take over the cleaning process at 1:00 p.m. and have the tenants pay for those services. However, the landlord allowed the tenant to stay and finish cleaning the carpets, and as a result the amount of compensation sought from the tenants was mitigated.

Further, the tenants were not out of the rental unit by 1:00 p.m. as required by Section 37 of the Act, the landlord had the legal right at that time to perform work without the consent of the tenants as the move-out inspection had been completed. The landlord spent an additional two hours cleaning. The landlord is entitled to be fairly compensated for her service at a reasonable value. Therefore, I find that the landlord is entitled to be compensated at the agreed hourly rate of \$25.00 per hour for the four and half hours. I grant the landlord compensation in the amount of **\$112.50**.

The landlord seeks further compensation for garbage disposal in the amount of \$37.50 as this was not discussed at the move-out inspection and the evidence of the tenant (DN) was the garbage and leaking oil jug were items left by the previous tenant. I find the tenants are not responsible for these costs. Therefore, the landlord's claim for compensation for garbage disposal fees is dismissed.

In this case the landlord seeks further compensation for the two hours of cleaning she compensated the new tenants. However, when the landlord left at 3:00 p.m. the evidence was the rental unit was cleaned, except the tenant (DN) was still steam cleaning the carpet.

Section 37 of the Act requires that the tenants leave the rental unit reasonably clean when the tenancy ends.

The evidence of the landlord was that when she left at 3:00 p.m. the items that the tenants were required to clean were cleaned by her. The new tenant's standard of cleanliness may have been higher, however, the tenants are only required to leave the rental unit reasonably cleaned. Therefore, I dismiss the landlord's claim for

compensation for the two hours the new tenants were compensated for cleaning the rental unit.

The landlord has claimed in her application costs for attending arbitration and other cost associated for preparing for arbitration. These fees are not recoverable under the Act. Therefore, I dismiss the landlord's claim for compensation for costs associated with preparing for and attending the dispute resolution hearing.

The landlord has also claimed in her application costs for a lost discount for home insurance. Home owner insurance is not a recoverable fee under the Act. Therefore, I dismiss the landlord's claim for compensation.

I find that the landlord has established a total monetary claim of **\$162.50** for compensation for losses and the \$50.00 fee paid for this application.

Conclusion

The landlord is granted a monetary order for loss under the Act.

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: April 11, 2012.

Residential Tenancy Branch