



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MND, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, changing the locks and for the recovery of the filing fee. The landlord also applied to retain the security deposit in full satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for the cost of cleaning, changing the locks and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on March 01, 2008 for a fixed term of one year. At the end of the fixed term, the tenancy continued on a month to month basis. Rent was \$780.00 per month due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$390.00.

The landlord stated that the tenant breached the tenancy agreement by subletting the unit. When the landlord found out, he requested the tenant to end the tenancy. Both parties entered into a mutual agreement to end tenancy in early October 2012, with an effective date of November 01, 2012. On November 01, 2012, the landlord entered into a tenancy agreement with the sub tenant.

Both parties offered contradictory testimony about the date that the sub tenant had moved into the rental unit. The tenant stated that the subtenant moved in at the end of October while the landlord stated that the sub tenant had moved in five months prior to the date of the new tenancy agreement.

The landlord did not conduct a move out inspection with the tenant but stated that he had conducted a move in inspection with the new occupant but did not file a copy of the report into evidence. The landlord testified that the new occupant asked him to clean the rental unit.

The landlord stated that he informed the tenant about the condition of the unit and requested her to clean. The tenant argued that she did not hear back from the landlord about cleaning until she requested the return of the security deposit.

The landlord stated that he had to change the locks for two reasons. The new occupant requested the change and the tenant returned just one key. The tenant argued that she had been provided with just one key.

The landlord is claiming the cost of cleaning (\$179.00 + HST) plus the cost of changing the locks (\$225.00). The landlord did not file invoices or proof of payment to support his claim.

Analysis

Cleaning costs:

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

The claimant bears the burden of establishing the claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the tenant breached the tenancy agreement by subletting the rental unit. The new occupant moved in sometime in October 2012. After a mutual agreement to end the tenancy, the official changeover was carried out on November 01, 2012. The landlord did not file evidence e.g. photographs or inspection reports to support his testimony that the unit was not clean at the time the new tenancy started.

Since the new occupant had moved in with a pet, prior to the date of the new tenancy agreement, I find that the condition of the rental unit on November 01, 2012 was not the sole responsibility of the tenant.

In addition, the landlord did not file an invoice to support the quantum of his claim and the date that the cleaning was done.

For the above reasons I find that the landlord has not proven that the unit was left in an unclean condition by the tenant alone and that he incurred an expense to clean it. Accordingly, the landlord's claim for cleaning in the amount of \$179 + HST is dismissed.

Cost of changing locks:

Section 25 of the *Residential Tenancy Act* addresses the cost of changing locks.

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

Based on the above, I find that the landlord is responsible for the cost of changing the locks and accordingly his claim for \$225.00 is dismissed.

The landlord has not proven his case and therefore must bear the cost of filing his application.

I order that the landlord return the security deposit plus accrued interest to the tenant within 15 days of receipt of this decision.

Conclusion

The landlord's application is dismissed. He must return the security deposit plus accrued interest to the tenant within 15 days of receipt of this decision.

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: February 19, 2013

Residential Tenancy Branch

