



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nordon Villa
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting her to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the female tenant's name had been transposed on the Application for Dispute Resolution, causing her first name to appear as her last name. The style of cause in this decision reflects the tenant's correct name.

Issue to be Decided

Should the landlord be entitled to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began in July 2012 at which time the tenants paid a \$487.50 security deposit and that it ended on November 17, 2012 when the tenants vacated the rental unit pursuant to an order of possession issued by the Residential Tenancy Branch.

The landlord testified that she lost rent for the month of December because she was unable to re-rent the unit for that month. She claimed that the tenants not sufficiently cleaned the unit and that she incurred a \$40.00 cleaning charge as a result.

The landlord stated that the cleaning was performed on November 29 and that she began advertising the rental unit after that date. She testified that she did not invite the tenants to participate in a move-out inspection of the unit due to a previous altercation with them.

The tenants testified that they thoroughly cleaned the unit at the end of the tenancy.

Analysis

In order to be successful in her claim, the landlord must prove both that she suffered a loss as a result of the tenants' actions and that she took reasonable steps to minimize her losses. The landlord had an obligation to provide the tenants with an opportunity to inspect the rental unit at the end of the tenancy and if she feared for her safety, could have appointed an agent to act on her behalf. Section 36(2) of the Act provides that when a landlord fails to conduct an inspection together with the tenants, she extinguishes her right to claim against the security deposit.

I find that the landlord has extinguished her right to claim against the deposit and accordingly dismiss the claim.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I find that the tenant have not extinguished their right to the return of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenants the \$487.50 security deposit together. I grant the tenants a monetary order under section 67 for \$487.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The claim is dismissed and I order the landlord to return the security deposit to the tenants.

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: March 01, 2013

Residential Tenancy Branch

