



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF, O

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain a portion of the tenant's security deposit. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Preliminary matter

The landlord submitted his application on April 18, 2013 to claim the sum of \$500.00 and to retain that amount from the security deposit for cleaning the rental unit. He said in his application that the rental unit was not cleaned properly and left dirty. The landlord also said the tenant left some few items of furniture at the rental property when she moved. The tenant responded to the landlord's claim on July 5, 2013. The landlord did not submit any documentary evidence to the Residential Tenancy Branch in support of his claim until the day of the hearing. The landlord's evidence was handed to me by a staff member less than an hour before the hearing was scheduled to commence.

At the hearing the tenant objected to the acceptance of the landlord's late evidence. She said that she received e-mails from the landlord yesterday that contained some photographs, but she has not viewed them. The landlord acknowledged that he did not deliver his evidence on time and blamed it on a recent computer problem. He requested an adjournment to allow his evidence to be considered. I refused to grant an adjournment of this hearing and I received oral testimony from the landlord with respect to his claim as well as testimony in reply from the tenant. I have not considered the landlord's documentary evidence because it was delivered late and it was not properly served on the tenant before the hearing.

Background and Evidence

The rental unit is the upper portion of a duplex. The tenancy began in April, 2011. The tenant paid a security deposit of \$850.00 at the beginning of the tenancy. There was no condition inspection when the tenant moved in. In 2013 the tenant purchased her own home. The landlord performed a pre-purchase inspection of the home for her. According to the tenant she moved out of the rental unit at the end of March 2013. She submitted photographs of the rental unit and testified that it was properly cleaned when she moved out.

The landlord testified that the tenant did not give formal written notice stating when she intended to move out of the rental unit. He said she did not leave the unit properly cleaned and left some of her furniture in the rental unit. The items left included a table and a rug. The tenant did not return the keys and garage door fob until mid-April. The landlord cashed the tenant's April rent cheque. He claimed \$500.00 for cleaning and he testified that he hired a cleaner and paid more than \$500.00 for cleaning in addition to performing cleaning work himself to ready it for occupancy by a new tenant. The landlord mentioned that the appliances had not been properly cleaned by pulling them out and cleaning behind them. The stove top was not cleaned and although the rental unit was superficially tidy it was dirty and needed deep cleaning.

The tenant testified that she left the rental unit properly clean and in good order at the end of the tenancy. She submitted photographs that she said showed that the unit was properly cleaned. The tenant acknowledged that she left several items at the rental unit; one item was a rug that she said was valuable and that she hoped a new tenant might be interested in purchasing. In her written submissions the tenant made some accusations concerning what she said was inappropriate conduct by the landlord. The landlord denied the accusations; he considered them highly inappropriate and made by the tenant to gain a tactical advantage. The concerns expressed by the tenant about the landlord's conduct are not germane to the matters before me on this application and I make no findings of fact concerning them.

Analysis

The burden of proving that he is entitled to a monetary award for cleaning costs at the end of the tenancy rests with the landlord. He had close to three months to submit evidence to support his claim and chose to wait until the day of the hearing or the day before the hearing to dispatch his evidence to the Residential Tenancy Branch by courier. He did not properly serve the tenant with his documentary evidence; he attempted to send it to her by e-mail. This does not constitute a valid means of service. The tenant has been put to the time and expense of preparing for and attending this hearing; it would be prejudicial to her to allow the matter to be adjourned; I have therefore denied the landlord's request for an adjournment and I have not considered his late evidence. The landlord has given oral testimony about the state of the rental unit at the end of the tenancy and about the need for cleaning. The tenant disputed that testimony. She said the unit was properly cleaned. The landlord has not provided a condition inspection report, either upon move-in, or on move-out and I find that he has

not proven, on a balance of probabilities that he is entitled to a monetary award in any amount for damages or cleaning costs.

Conclusion

The landlord's claim for a monetary award in the amount of \$500.00 and to retain that amount from the tenant's security deposit is dismissed without leave to reapply.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. 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.

In this application the landlord requested the retention of a portion the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$850.00. This order may be registered in the Small Claims 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: July 11, 2013

Residential Tenancy Branch

