



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was a hearing with respect to the landlord's claim 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?

Is the landlord entitled to retain any part of the security deposit?

Background and Evidence

The rental unit is a suite in the landlord's residential property in Vernon. I was not provided with a copy of a tenancy agreement. The parties disagree as to the start of the tenancy. The landlord said it began in December, 2012. The tenant said that it started in January, 2013. The landlord and the tenant agree that the tenant paid a \$325.00 security deposit at the commencement of the tenancy.

The tenant moved out of the rental unit on June 30, 2013. The landlord said that the tenant did not properly clean the unit before she moved out and he had to hire cleaners to clean the unit on July 1st, a holiday, at a cost of \$225.00. The landlord has claimed the said sum from the tenant's security deposit that he holds. The landlord submitted a typescript said to be the contents of an e-mail from his manager who lives at the rental property. She reported that the rental unit was not properly cleaned and said that the floors were not cleaned or washed and the carpet was not cleaned, although it was wet as though an attempt was made to clean it. According to the e-mail the appliances were dirty and cupboards and windows were not clean. It was reported that the new tenants refused to move-in until the unit was cleaned.

The landlord submitted some photographs that showed damaged blinds, some carpet stains and some marks on the walls and some holes or marks in the walls.

The tenant testified that there was no condition inspection when she moved into the unit and none when she moved out. The tenant said that the rental unit was exceedingly dirty when she moved in. She said the blinds were damaged and broken at the outset of the tenancy. She spent a lot of effort with the assistance of her mother to clean the unit and make it habitable. The tenant testified that she left the rental unit in better condition when she moved out than it was in when the tenancy began. The tenant submitted letters from her mother and from a friend who assisted her to move-in and move-out. Both persons supported the tenant's position and said the unit was in terrible condition when the tenant moved in. They said that the tenant properly and thoroughly cleaned the unit, including cleaning the carpet on moving out. The tenant referred to the landlord's photographs. She said that the carpet stains, wall marks and blind damage were all pre-existing damage and did not represent any damage that she caused. The tenant did not agree that the landlord should be authorized to keep any part of her deposit.

Analysis

The landlord did not submit a copy of an invoice for cleaning and there was no condition inspection conducted when the tenant moved in or when she moved out. The landlord's evidence in the form of an e-mail report is contradicted by the tenant's testimony at the hearing and by the written statements of her witnesses. There is no invoice for cleaning and the tenant's evidence is that the rental unit was unclean when the tenancy began, but it was left in better condition than she found it when she moved out. The landlord bears the burden of proving his claim on a balance of probabilities and given the conflicting evidence, the absence of an invoice for cleaning and the fact that I have the direct evidence of the tenant, contradicted only by the text of an e-mail said to be from the landlord's manager, I find that the landlord has not shown that he is entitled to an award for cleaning in the claimed, or in any lesser amount. The landlord's application for dispute resolution is therefore dismissed without leave to reapply.

Conclusion

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 the security deposit in 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 \$325.00. This order may be registered in the Small Claims Court and enforced as an order of that court. If the landlord has returned any part of the security deposit prior to the granting of this order then such amount must be applied to reduce the amount payable under this order.

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: October 07, 2013

Residential Tenancy Branch

