



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of double the security deposit. Both parties appeared and had an opportunity to be heard.

The landlord had filed evidence in support of a claim for damages against the security deposit but had not made a formal application for dispute resolution for a monetary order. Both parties expressed a desire to have all issues between them resolved at this hearing. Accordingly, I heard evidence on the landlord's claim for damages as well as the tenant's claim for return of the security deposit.

Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to this tenancy?
- If so, is either the landlord or the tenant entitled to a monetary order and in what amount?

Background and Evidence

The rental unit is a two bedroom/one bathroom apartment style condominium. The unit is owned by the landlord. The parties agree that the market rent for similar units is \$1400.00 per month.

About two years ago the landlord agreed to take the tenant as a roommate. They agreed that he would pay rent of \$700.00 per month, payable on the first day of the month. Later they agreed to reduce the rent to \$675.00 per month. The tenant paid a security deposit of \$350.00. With the exception of the tenant's bedroom furniture, the unit was completely furnished and the kitchen fully equipped by the landlord.

The landlord testified that during the entire tenancy she only slept one night at the apartment; the rest of the time she stayed at her boyfriend's place. There was one month when she rented her room to a friend who had just left an abusive relationship, with the consent of the tenant. The friend only stayed for a week or so. During this period the tenant's rent was reduced.

The parties agreed that the tenancy would end on April 30, 2013.

The landlord found a new tenant. This tenant wanted the unit unfurnished and wanted to move in April 28. This early date suited the tenant who was returning to Alberta after the end of the school year. The tenant made arrangements to leave on April 25.

The parties agree that during the second last week of April the landlord, with the assistance of her boyfriend and her parents, moved most of the furniture, and her personal possessions out of the rental unit. They cleaned her room, the bathroom, the living room, the balcony and the kitchen, although they did not clean the insides of the kitchen cabinets and refrigerator.

On April 25 the tenant left the keys with the landlord's boyfriend, who works in the neighbouring building.

When the landlord went into the rental unit on the afternoon of April 27 she found that the tenant had left the kitchen cabinets and refrigerator full of food; recycling on the deck; and small appliances in the kitchen. The unit had not been cleaned.

The tenant, with the assistance of her boyfriend and parents, spent the evening emptying the apartment; washing the kitchen including the cabinets, the refrigerator and the stove; washing the bathroom; and shampooing the carpets.

The landlord claims a total of sixteen hours labour for cleaning (4 people X 4 hours each) at the Molly Maid rate of \$40.00/hour/person; the rental cost of the carpet shampooer - \$31.99; and the cost of shampoo - \$23.49.

By a letter dated June 19, 2013, the tenant provided the landlord with his forwarding address in writing and asked for the return of the security deposit. The letter was sent by registered mail and was actually received by the landlord on June 21.

When the landlord did not return the security deposit the tenant filed this application for dispute resolution.

The tenant acknowledged that he left some things behind and that he did not shampoo the carpets. He said he did some cleaning and that he left the unit in the same condition as when he moved in.

Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only decide disputes that are within the jurisdiction set out by the statute.

Section 4 of the *Act* lists a number of tenancies to which the *Act* does not apply. Included in that list are those where the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

At first, the fact that the owner of this accommodation did not actually spend much time in the rental unit made me wonder whether this tenancy might fall within the purview of the *Residential Tenancy Act*. Upon reflection I have decided that it does not.

The legislation does not specify how long or how often an owner must stay in the unit for this exception to apply. Except for one month when she let her bedroom to a friend in need the landlord kept her bedroom for her own use. Although it turned out that she never actually used her bedroom or stayed in the apartment very often she had the right to do so at any time and for as long as she wanted. In addition, she kept personal possessions at the unit and only charged the tenant a roommate's rent. Accordingly, I find that section 4 applies to this tenancy and it is excluded from the operation of the *Residential Tenancy Act*. As a result, the Residential Tenancy Branch does not have jurisdiction over this dispute.

Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute.

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: December 03, 2013

Residential Tenancy Branch

