



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting them to retain part of a security deposit.

Issue to be Decided

Should the landlord be permitted to retain an amount from the security deposit?

Background and Evidence

The evidence of the landlord's agent, A.T., is as follows. The tenancy began on September 22, 2011 at which time the tenant paid a \$250.00 security deposit. When the tenant gave notice that she would be vacating the unit on September 30, 2013, the landlord gave her a document entitled "Charge Analysis" which identified costs associated with cleaning in order to advise the tenant what she would be charged if she failed to adequately clean the rental unit.

The landlord provided a copy of the condition inspection report and testified that another agent of the landlord had conducted the condition inspection without the tenant at the end of the tenancy and noted a number of deficiencies. The landlord seeks to recover charges for the following areas which required cleaning:

A.T., the agent who appeared at the hearing, testified that the charges are set by the landlord and that sometimes the party that performs the cleaning will charge more and sometimes less, depending on the severity of the soiling.

Analysis

Section 7(1) of the Act provides that where a tenant does not comply with the Act, she must compensate the landlord for the resulting loss. In order to prove their claim, the landlord must prove both that the tenant failed to comply with the Act and the amount of the loss that resulted from that failure. In this case, the landlord performed a condition inspection of the rental unit without the tenant and provided no explanation as to why the tenant did not participate. Section 35 of the Act provides that the landlord must inspect the unit with the tenant and provide the tenant with 2 opportunities to schedule that inspection. Failure to comply with section 35 results in the landlord extinguishing the right to claim against the security deposit.

While I suspect that the landlord may have extinguished their right to claim against the security deposit as no evidence was before me showing that the tenant was given 2 opportunities to schedule an inspection time, the greater difficulty with the landlord's claim is that there is insufficient evidence to corroborate the claim that the areas in question were left unclean. The tenant was responsible to leave the rental unit reasonably clean and in order for me to determine whether the tenant complied with that obligation, I must have either direct testimony from a party who observed the condition of the unit or photographs which would provide an objective view of the unit. In this case, A.T. appeared at the hearing and had no personal knowledge of the circumstances surrounding the inspection or of the condition of the unit and no photographs were provided. I am therefore unable to determine whether the tenant complied with the Act and I find that the landlord has failed to prove that element of the claim.

I further find that the landlord has failed to prove the quantum of the loss. The landlord has arbitrarily established a set fee for cleaning which may or may not represent the actual costs. Had the tenant agreed in advance to pay those charges, I would have no difficulty awarding the landlord the amount claimed, assuming the landlord had been able to prove that the tenant failed to leave the unit reasonably clean. However, absent the agreement of the tenant to those charges and without corroborating evidence showing the actual amount of time it took to clean the various areas, I am not satisfied that the charges represent the actual costs. For example, the landlord charged \$30.00 to clean a toilet. Even at a cleaning rate of \$30.00 per hour, I find it unlikely that it took a full hour to clean a single toilet. I find it likely that the landlord's charges are excessive.

Having found that the landlord has failed to prove both that the tenant failed to comply with the Act and the losses which resulted from that failure, I must dismiss the claim.

Conclusion

The claim is dismissed. The landlord is ordered to return the \$250.00 security deposit to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$250.00. This order may be filed in the Small Claims Division of the Provincial 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: January 24, 2014

Residential Tenancy Branch