

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in August 2006 at which time the tenant paid a \$360.00 security deposit. The tenancy ended on December 1, 2009. The tenant brought an application for dispute resolution claiming an award of double her security deposit which was dismissed as premature with leave to reapply.

The landlord testified that the tenant only gave 2 weeks notice that she was vacating the rental unit, that she failed to adequately clean the unit and that she broke the elevator key in the elevator which had to be repaired by a service call from a repair company. When asked how he arrived at the \$410.00 figure he was claiming, the landlord stated that this was the approximate cost of repairing the elevator and cleaning the rental unit. The landlord testified that the elevator company regularly services the elevator several times each month and doesn't invoice separately for service calls. The landlord did not provide any corroborating evidence of the condition of the rental unit such as the condition inspection report, photographs or time sheets of employees who were involved with cleaning the unit. The tenant acknowledged that the elevator broke down several times during her move but denied having broken the key in the lock. The tenant further testified that she cleaned the rental unit upon her departure.

Analysis

The landlord bears the burden of proving his claim. I find that the landlord has failed to prove on the balance of probabilities that the tenant caused the elevator key to break in the lock or that she left the rental unit in an unclean condition. Even if the tenant did give only two weeks notice that she was vacating the unit, the Act does not prescribe a penalty for late notice and the landlord has not proven that he suffered any loss from that late notice. For these reasons I dismiss the landlord's 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 has not extinguished her right to the return of the deposit as she participated in the condition inspection of the unit. 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 tenant the \$360.00 security deposit together with the \$11.68 in interest which has accrued to the date of this judgment.

Conclusion

I grant the tenant a monetary order under section 67 for \$371.68. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 21, 2010
