

DECISION

Dispute Codes O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute the Landlord's excessive claim for damages.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Resident Manager on December 3, 2009.

The Resident Manager and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to an Order to prevent the Landlord from seeking damages under section 62 of the *Residential Tenancy Act*?

Preliminary Issues

Landlord's Counsel advised that he had not had an opportunity to prepare for this hearing because he was recently handed this file by his legal partner and he was advised the owner of the property is in hospital. Counsel requested an adjournment of today's hearing.

After a review of the application and in consideration that the Landlord was represented by Counsel and his Resident Manager who dealt directly with the situation, the

adjournment request was denied and the hearing proceeded on its merits in accordance with the *Residential Tenancy Branch Rules of Procedure 6.4*.

Background and Evidence

The Tenant provided testimony that he moved into the rental unit sometime in March or April 2006 and moved out in July 2009 after receiving an eviction notice from the Landlord. Rent was payable in the amount of approximately \$460.00 and the Tenant believes he paid as security deposit of \$230.00.

The Tenant testified that he could not recall signing a tenancy agreement or a move-in inspection report.

The Resident Manager (RM) testified that a notice to end tenancy was issued after the Tenant failed to clean up his apartment after the RM had spoken to the Tenant, requesting he clean the rental unit, on three prior occasions. The RM stated that they had a recent infestation of mice and that he traced the infestation to the Tenant's apartment. RM stated that when the Tenant did not respond the RM and his wife sought assistance from the local government agencies and their attempts were unsuccessful.

The RM confirmed that he received notification in the mail on approximately July 5, 2010, that the Tenant had vacated the rental unit. The RM testified the Tenant had left the apartment filled with, among other things: contaminated food and dead mice inside the fridge and on the stove top; refuse filling the entire rental unit; mice feces; urine; human feces; a broken toilet seat; filthy shower unit; and rotten vanity, which took the RM and one other person over 7 ½ hours to clean and remove the refuse that was left behind. RM argued that he took 19 trips to the dump in his Ford Ranger pick-up truck and filled two overhead dumpsters with refuse taken from the Tenant's rental unit.

During the RM's testimony the Tenant's Advocate advised the Tenant left the room upset, and returned approximately three minutes later.

Analysis

The Tenant has filed an application for dispute resolution in response to a written demand issued by the Landlord's Counsel to the Tenant, on November 9, 2009, for damage and loss in the amount of \$14,798.54 resulting from the tenancy.

Upon hearing the testimony, I find jurisdiction of this matter to fall within the *Residential Tenancy Act*, and I hereby order the Landlord to comply with the Act, pursuant to section 62(3).

In the absence of an application for dispute resolution filed by the Landlord, it is my finding that at the time that the Tenant applied for dispute resolution, there is no claim against the Tenant for damage or loss, in accordance with the Act, and therefore the Tenant's application is premature. I therefore dismiss this claim with leave to re-apply.

Conclusion

I HEREBY DISMISS the Tenant's application, with leave to reapply.

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: April 16, 2010.

Dispute Resolution Officer