



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Landlord's application to apply the security deposit towards damages left at the end of the tenancy and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary award for damages, and to apply the security deposit in satisfaction of that award?

Background and Evidence

This tenancy began on May 1, 2002. The Tenant paid a security deposit in the amount of \$300.00 on May 12, 2002 to her former landlord. In 2005, the Landlord inherited the tenancy when he purchased the rental unit.

An Order of Possession for repeated late payment of rent was granted to the Landlord at a previous Hearing. The Tenant applied for judicial review, which was heard on September 29, 2010. The Tenant's application was dismissed. The Honourable Supreme Court Justice ordered that the Tenant give the Landlord vacant possession of the rental unit on September 30, 2010.

The Landlord gave the following testimony:

The Landlord testified that the Tenant did not leave the rental unit in a reasonably clean state, and left garbage at the rental property. The Landlord seeks a monetary award in the amount of \$300.00 for his labour in cleaning the rental unit and disposing of the garbage. The Landlord provided photographs in evidence in support of his claim.

The Tenant gave the following testimony:

The Tenant testified that she was complying with the Order to leave on September 30, 2010, and fully intended to clean the rental unit but that the Landlord and his son continually pestered her to leave. They finally called the police, who attended and told her she should leave because it wasn't safe to be there any longer. The Tenant left without finishing the cleaning.

The Landlord gave the following reply:

The Landlord agreed that he had phoned the police and said he did it because he wanted to make sure the Tenant left.

Analysis

It is important to note that the Tenant wished to make her own claim for damages at the Hearing. The Tenant has not yet filed an Application for Dispute Resolution and was advised that we were dealing only with the Landlord's Application at the Hearing. Likewise, the Landlord wished to add to his claim for compensation. He was also advised that the only matters before me were his claim for the cost of cleaning and junk removal, and his application to apply the security deposit towards his monetary award.

The photographs provided by the Landlord depict an open fridge and cupboards with some food and miscellaneous groceries in them; a broom on a kitchen floor beside a

neat pile of garbage; a clean sink with a brush and other unidentified material in it; a small shelf, chair, cabinet and fridge; and a few stacks of boxes and other refuse stacked beside the house. Based on the testimony and evidence of both parties, I find that the Landlord has not established a monetary award in the amount of \$300.00. The Landlord called the police to assist the Tenant in moving and thereby effectively stopped the Tenant from cleaning the rental unit as she set out to do.

Therefore, the Landlord's application is dismissed. The Landlord is holding the Tenant's security deposit, together with accrued interest in the amount of \$10.62. I hereby order the Landlord to return the security deposit and interest to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed in its entirety.

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$310.62, representing return of the security deposit and accrued interest. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: February 21, 2011.
