



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MND, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim related to alleged damage caused to the rental by the tenant. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues(s) to be Decided

Has the landlord established a monetary claim related to damage caused to the rental unit by the tenant?

Background and Evidence

This tenancy began on October 1, 2008 for the monthly rent of \$795.00 and a \$400.00 security deposit paid on September 23, 2008. The tenancy ended effective March 31, 2009. The parties failed to participate in move-in and move-out condition inspections and the landlord failed to produce written reports contrary to sections 23 and 35 of the *Act*.

The landlord is seeking compensation for a damaged fence and a damaged lamp. The landlord stated that the tenant had a large gathering or party in February 2009 and the next morning she discovered that her fence was damaged. The landlord believes that one of the tenant's guests damaged the fence. The landlord also seeks compensation for a damaged lamp.

The tenant denied damaging the fence and denied that his guests damaged the fence. The tenant questioned how the landlord could know who damaged the fence. The tenant does not dispute that the lamp was damaged; however, he has replaced the lamp and subsequently fixed the original lamp and returned it to landlord. The landlord submits that the replacement lamp provided by the tenant was insufficient as it was too small. The landlord acknowledged receiving the old lamp back but disputed that it was repaired.

Analysis

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*.

The landlord filed this application seeking compensation due to alleged damaged caused by the actions of the tenant. As a result the landlord has the burden of proving her claims against the tenant. The landlord's claim is based solely on oral testimony in the absence of a move in and move out condition inspection report. The purpose of the condition inspection reports is to establish the condition of the rental unit at the start and at the end of a tenancy. The *Act* places significant obligation on the landlord to ensure that the inspections are carried out. I find that the landlord failed to meet these obligations and as a result extinguished any right to the tenant's security deposit plus interest pursuant to sections 24 and 36 of the *Act*.

I find that the landlord has failed to provide sufficient evidence to prove that the tenant or a guest of the tenant's damaged the fence, rather the landlord can only speculate as to who caused the damage to the fence, especially since the fence is situated between private and public property. There are also multiple occupants living at the same property and in the absence of some corroborate evidence to establish that the tenant or a guest of the tenant was responsible for the damage to the fence I deny this portion of the landlord's application.

Although tenant has acknowledged damaging the lamp, I find that the landlord has not established any loss as a result. The landlord characterized this lamp as an "antique"; however, no evidence was presented to establish that it had any great sentimental value. The purpose of compensation is to return the person or compensate the person so they are back to their original position if there was not a breach of the contract. I find that the lamp has very little value and the tenant has adequately mitigated the landlord's loss by replacing the lamp and by attempting to repair the original lamp.



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Conclusion

I dismiss the landlord's application as it is without merit. The landlord has also extinguished any right to the tenant's security deposit and it must be returned to tenant. As a result I have issued a monetary Order to the tenant for the sum of **\$401.64**. This Order must be served on the landlord by the tenant and then can be enforced through the Small Claims Court of British Columbia.

Dated: July 08, 2009.

Dispute Resolution Officer