

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary compensation for alleged damages, cleaning and rent due for the rental unit, and to keep the security deposit in partial satisfaction for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

Background and Evidence

At the outset and the end of the tenancy an Agent for the Landlord and Tenant performed condition inspection reports regarding the condition of the rental unit. At the time of the outgoing report, the Agent did not note any cleaning, rent or other charges that were being claimed against the Tenant's security deposit. Both parties signed off on the outgoing inspection.

Following the end of the tenancy and completion of the report the Landlord made this claim, seeking \$440.00 in damages from the Tenant for cleaning and rent.

The Landlord claims that the Agent was instructed not to do a thorough report, as they were concerned the Tenant would continue fighting the eviction the Landlord was attempting to enforce against the Tenant.

The Landlord submitted that there had been many problems with the Tenant during the tenancy and they were concerned the Tenant would not return the keys for the rental unit.

The Landlord further alleges that representatives of the Tenant, consisting of an advocate from a tenant's rights group and another from the law centre, had threatened the Landlord that the Tenant would put up a vigorous defence to the eviction, and would pursue a human rights claim if the deposit was not returned or was claimed against in retribution against the Tenant.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find that the Landlord may not claim against the Tenant and I dismiss the claim.

The main purpose of performing condition inspection reports is to have a before and after occupancy comparison of the condition of the rental unit. The Agent performed the incoming and outgoing reports and noted no work or charges that were to be deducted from the security deposit.

I find the Tenant was entitled to rely on these reports and it is not now open to the Landlord to attempt to circumvent the reports prepared by an Agent, and claim damages which were not indicated by the Agent to the Tenant, or indicated in the condition reports, at the time of the inspection. I note that in this particular case, the Landlord was not claiming for hidden defects, which of course would be another circumstance entirely.

Another purpose of the outgoing report is to give the Tenant an opportunity to complete cleaning that may have been missed or negotiate an amount to be deducted from the security deposit for cleaning, or unpaid rent, etc. The Tenant was not informed at the time that these charges would be made and therefore, she did not have the opportunity to perform these tasks herself or otherwise negotiate for a deduction from the security deposit.

I also note the security deposit remains the property of the Tenant and is kept in trust by the Landlord, unless there is an Order or if one of the other portions of the Act allows the Landlord to keep the deposit. Therefore, pursuant to the Act and policy guidelines, I order the Landlord to return the security deposit and interest to the Tenant in the amount of **\$302.35** forthwith. The Tenant is granted and issued a monetary order and may enforce it through the Provincial Court of British Columbia.

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: March 31, 2010.

Dispute Resolution Officer