

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenant on July 13, 2010 seeking a Monetary Order for loss or damage under the rental agreement or legislation and recovery of the fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the damage or loss claimed.

Background and Evidence

This tenancy is anomalous to the extent that it occurred under a fixed term agreement for 22 days and the tenant was a company that sub-let the rental unit to third parties during the winter Olympics. A third company introduced the landlord and tenant, but that company is not named on the rental agreement.

The tenancy began on February 7, 2010 and ended on March 1, 2010. Rent was \$4,000 for the 22 days and the landlord held a security deposit of \$900.

As a matter of note, the tenancy was the subject of a hearing on July 13, 2010 on the tenant's application for return of the security deposit. In awarding the tenant the security deposit in double under section 38(6) of the *Act*, the Dispute Resolution Officer the noted that the landlord remained free to bring her own application for damages.

During the hearing, the landlord gave evidence that her claim was based on the loss of personal belongings that had been left in the rental unit during the tenancy. She stated that her agreement with the original agent was to rent the unit as a one-bedroom apartment, that it was advertised as such, and that she would keep personal belongings in the den under separate lock.

The tenant stated that she had never agreed to the landlord leaving personal belongings in the rental unit and that the rental agreement contained no such provision. The tenant stated that she had tried to arrange a move-in condition inspection with the landlord, but that the landlord had not participated.

She stated that when she took possession of the rental unit, she was surprised to find the landlord's property had been left behind. When she was unable to contact the landlord, she instructed her cleaning company to package the materials and put them into storage in her company facility.

The landlord stated that the goods had been left in the cleaner's truck and when they were returned to her, some were missing. She filed a police report on the matter of the missing items, but was advised that little could be done as the property had been exposed to the tenant, the tenant's cleaners, the sub-tenants and possibly others.

Analysis

The landlord makes claim for \$5,000 but has given scant evidence of lost or damaged articles beyond a general description including clothing and an Ipod. In addition, I find that the tenant is partially responsible for any loss as she did not participated in a move-in condition inspection which would have provided an opportunity to avoid misunderstanding. In addition, the exclusion of the den, an exceptional provision, was not written into in the rental agreement.

I accept the evidence of the tenant that she did not agree that the den should be excluded and, caught unaware at the 11th hour, took the reasonable measure of having the goods put in plastic garbage bags and placed into storage, and making subsequent efforts to contact the landlord.

While I find that the landlord suffered some loss among the items, I find her evidence documenting the loss to be inadequate and that her lack of astuteness contributed to her loss. Therefore, I find that the landlord has not met the burden of proof required of a claimant in damages.

Conclusion

The application is dismissed without leave to reapply.

November 29, 2010