

DECISION

Dispute Codes FF, MND

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1800.00, and a request for recovery of the \$50.00 filing fee that was paid for the application for dispute resolution.

Background and Evidence

The applicant testified that:

- The tenant moved all her usable belongings out of the rental unit on September 1, 2009, leaving a large amount of garbage behind.
- The tenancy was over, however he waited a few days to allow the tenant to return and remove the remainder of the belongings, however the rental unit was starting to smell very bad due to the amount of garbage left behind and when she had not returned by September 9, 2009, he had two of his employees enter the unit, remove her abandoned items, and cleanup and repair the rental unit.

- It took 2 of his employees a total of two days to remove all the garbage and broken furniture left behind by the tenant, and to clean up and repair the rental unit.
- Unfortunately because he felt the tenant had no money to pay for the repairs and garbage removal, he did not keep receipts, other than the receipts for the landfill which total \$158.00.
- He originally had not intended to file any claim against the tenant, however after she filed what he believes to be an unfounded claim against him, he decided he would go after the tenant for the damages and costs that resulted from her tenancy.

The applicant is therefore requesting an order for \$1800.00 to cover his costs of cleaning, garbage removal, and repairs.

Unfortunately the respondent did not appear at the hearing, however her advocate presented her case for her as follows:

- The Ministry of human resources had paid the tenants full September 2009 rent, and therefore there was no reason for the landlord to be moving any of the tenant's belongings out of the rental unit before the end of September 2009.
- The tenant informed him that she did not remove any of her belongings from the rental unit, and that the landlords must have disposed of all her belongings.
- They have supplied a DVD as evidence, which shows the tenant's belongings being thrown out of an upper window into a dumpster.

It is the respondent's position therefore that she had until the end of September 2009 to remove all her belongings and clean up the rental unit, and therefore the landlord's full claim should be dismissed.

In response to the tenant's claims the landlord testified that:

- The Ministry of human resources did pay the tenants full September 2009 rent, however the full amount was returned to the tenant along with an extra \$100.00 to assist the tenant in her move.
- The tenant supplied a letter in her own handwriting stating that she has received the full rent overpayment back.
- The tenant did remove all the usable belongings, and anything that was left behind was just junk, such as broken furniture, stinking clothing, and rotting food.
- He does not believe that the tenant intended to come back and remove anything further, as she had left her key behind, on the counter.
- The copy of the DVD that was supplied by the tenant to him is blank; however any items that were thrown into the dumpster were, in his determination, of no value.

Analysis

First of all I want to state that although the respondent's advocate stated that a DVD has been supplied to the Residential Tenancy Branch, I am unable to find any such DVD.

Therefore in the absence of any sworn evidence to the contrary, I accept the landlords claim that all the items left behind in the rental unit were items of no value.

It is also my finding that this tenancy was over and that the money that was paid to the landlord for September 2009 rent was returned in full to the tenant. The letter written by the tenant clearly states that the money was refunded to her and that she would be out of the rental unit by the end of the day on September 1, 2009.

I accept the landlord's testimony that the tenant left the keys behind, and therefore I find it very unlikely that she was returning to remove anything further. Any items that were left behind therefore are considered to have been abandoned, and the landlord must follow the Residential Tenancy Regulation regarding abandonment of property as follows:

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

In this case the landlord has testified that the items left behind were just junk and garbage, and had no market value, and therefore it is my finding that it was reasonable for the landlord to dispose of those items to the local a landfill.

That being said is also my finding that the landlord has not met the burden of proving his claim for \$1800.00 in damages and cleanup costs. As stated by the landlord he has not supplied any invoices in support of this claim other than the landfill receipts.

Therefore the only portion of this claim that I am willing to allow is the claim for the landfill costs totalling \$158.00.

I also allow recovery of the \$50.00 filing fee.

Conclusion

I have issued an order for the respondent to pay \$208.00 to the applicant.

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 25, 2011.

Residential Tenancy Branch