



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, O, FF
 MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The landlord's application is for a monetary order for damage to the unit, to keep all or part of the security deposit, other and recovery of the filing fee. The tenant's application is for return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

Per section 64 (1) (c) of the *Act* the landlord's application was amended to add the second landlord's name to the application and 'basement' to the dispute address.

The landlord testified that on January 31, 2011 she conducted a move-out inspection with the tenant but did not complete a move-in or move-out condition inspection report. The landlord during the move-out inspection advised the tenant that she would deduct \$30.00 from the security deposit for some marks on the wall and sent the tenant a cheque for \$420.00; both parties agree this to be true.

The landlord stated that she did not notice the extent of the dirt and damage in the rental unit during the move-out inspection and only noticed the condition of the rental unit when she returned on her own the following day. The landlord stated that she immediately contacted the tenant and asked her to return to the rental unit to complete the cleaning which the tenant agreed to but by February 3, 2011 the tenant had still not returned to the rental unit to clean. The landlord stated that she then put a stop payment

on the \$420.00 security deposit cheque she had sent to the tenant and filed for dispute resolution. The landlord has submitted an estimate of \$528.00 for cleaning and repairs to the rental unit.

The landlord in this application is seeking to keep the tenant's \$450.00 security deposit for damages and cleaning costs.

The tenant testified that she had thoroughly cleaned the rental unit and with exception of some scratches on the wall, left the rental unit in the same condition it was in at the start of the tenancy and that was why the landlord agreed to a \$30.00 deduction from the security deposit. The tenant maintains that the edges or the carpet were dirty when she moved in, there were marks on the walls, the stove was rusty and that the landlord's allegations are all false. The tenant stated that the landlord was trying to take advantage of her because she was new to the area and did not understand the process.

The tenant in this application is seeking return of \$420.00 of the security deposit.

Both parties in the hearing directly contradicted one another's testimony and continually accused each other of being untruthful.

Analysis

Based on the documentary evidence and directly conflicting testimony of the parties and in the absence of move-in and move-out inspection reports, I find based on the balance of probabilities that the landlord has not met the burden of proving they have grounds for entitlement to a monetary order for damages and cleaning costs.

As the condition of the rental at the start of this tenancy has not been established it is not possible to determine what, if any of the damage the tenant is responsible for and if the rental unit was not adequately cleaned at the end of this tenancy. Therefore the landlord's application is dismissed without leave to reapply.

The landlord is not entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of the \$450.00 security deposit.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for **\$450.00**. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$500.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 2, 2011.

Residential Tenancy Branch