



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking a monetary order for compensation under the Act or tenancy agreement, to keep all or part of the security deposit, and to recover the filing fee for the Application.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the Landlord wanted to amend her Application to include a claim for damage to the rental unit walls, which would have increased the amount she claimed for monetary compensation in her Application. As this would unfairly prejudice the Tenant I did not allow the amendment, and it is dismissed with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began July 1, 2009, with the parties entering into a written tenancy agreement in September of 2009. The monthly rent was set at \$750.00 and the Tenant paid the Landlord a security deposit of \$375.00, on or about June 15, 2009. The rental unit is a basement suite in the Landlord's residence. The Landlord lives in a separate dwelling above the Tenant.

This dispute involves the Landlord's vacuum cleaner.

The Landlord testified and submits that she saw the Tenant trying to clean the rental unit with a portable shop vacuum. She testified she had an older vacuum which she loaned the Tenant to use in the rental unit. She testified it was in good working order and she had purchased it new around 1995. She testified and submitted that she had used the vacuum to clean the rental unit and for other jobs around the property, such as her car interior. She testified and submits that the vacuum was in complete working order when she loaned it to the Tenant.

The Tenant testified and submitted that he saw central vacuum outlets around the property and asked the Landlord if he could use the attachments for cleaning the rental unit. He testified she told him she had an old vacuum cleaner that she never used that he could have. He testified that she never mentioned she wanted the vacuum cleaner back. He testified he believed she was just trying to get rid of her old stuff. He testified that when the Landlord was away on a vacation it stopped working and he disposed of it, because there was no room to store it in the rental unit.

There are some exchanges between the Landlord and the Tenant in writing regarding this issue.

On February 2, 2011 the Tenant emailed the Landlord and dropped a note in her mailbox, explaining that he was ending the tenancy effective at the end of February 2011. The Landlord informed the Tenant of his obligations under the tenancy agreement and the Act to give proper notice, and informed the Tenant he would have to pay rent until the end of March 2011.

In this same email, the Landlord wrote, "Please remember to leave my vacuum cleaner." [Reproduced as written.]

The Tenant replied in his next email, "Unfortunately, that vacuum stopped working and I disposed of it. I did not realize you still wanted it." [Reproduced as written.]

The parties then exchanged several more emails regarding the end of the tenancy and the vacuum cleaner.

The Landlord denies she gave the Tenant the vacuum. She testified and submitted evidence that the used vacuum and its attachments (a power head etc.), is estimated to be worth \$336.00 or \$448.00. The estimates are from two different vacuum cleaner companies in the area where the rental unit is located and are for used vacuums of the same model.

The Landlord testified that the vacuum cleaner was not the Tenant's to dispose of even if it had stopped working. She explained that in the normal course of such circumstances, she would have expected the Tenant to return the vacuum to her explaining it had stopped working. She testified there were several simple reasons it may have stopped working, such as having a full bag of dirt, which would shut off the vacuum.

The Tenant testified and submitted that the Landlord never mentioned she wanted the vacuum back. He estimates that the vacuum was over 30 years old based on its colour, and not worth anything as it had stopped working.

The Tenant testified that the Landlord has failed to show the vacuum was loaned and not given. He submits that the Landlord had not performed an incoming condition inspection report and therefore, "... anything claimed on move out that is not stated in the move in inspection as being an issue is void." [Reproduced as written.]

The Tenant further submits that, "... the vacuum was never written into any of the agreements we had signed and that as per the tenancy laws, it was not my responsibility to replace something that I was led to believe she no longer needed and was "gifted" to me." [Reproduced as written.]

The Tenant did offer to replace the Landlord's vacuum, with an alternate one he found on an Internet website. He testified he regretted getting rid of the vacuum, because the Landlord feels she needs it back.

The Landlord was not satisfied with the offered replacement, as she believes it is an unacceptable substitution since it does not have the same functions or attachments.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenant failed to return the Landlord's property to her at the end of the tenancy, and the Landlord has suffered a loss due to this.

I find that the Landlord loaned the Tenant the vacuum cleaner for use in the rental unit during the tenancy. The vacuum cleaner was, in effect, an appliance loaned to the Tenant for use during the tenancy.

I do not find the Tenant did this as an intentional act of theft, rather, I find it more likely that the Tenant presumed, in error, he could do whatever he chose to do with the vacuum cleaner.

There was insufficient evidence from the Tenant that the Landlord intended him to have the vacuum as a gift. Furthermore, the Tenant provided no authority to show in a business relationship, such as the one between the Landlord and a Tenant, there is a presumption of a gift when such an exchange occurs.

There is little difference between the Tenant disposing of the vacuum or, for example, of a lawn mower (or other appliance), provided for use during the tenancy. Simply put, the vacuum was not his property to dispose of.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Landlord has suffered a loss by the Tenant's failure to return the Landlord's property to her. The average between the two estimates for the vacuum cleaner is \$392.00, and I find this is sufficient to reimburse the Landlord for her losses. Therefore, I find the Landlord has established a monetary claim against the Tenant of **\$442.00**, which includes the \$50.00 filing fee.

Pursuant to section 72 of the Act, I allow the Landlord to retain the security deposit of \$375.00 in partial satisfaction of the claim, and I grant her a monetary order for the balance due of **\$67.00**. This order is enforceable in Provincial Court.

This decision and order is final and binding on the parties, except as otherwise provided for in the Act and 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: August 02, 2011.

Residential Tenancy Branch