

DECISION

Dispute Codes MND, MNSD, RPP, FF, O

Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for damage to the unit, site or property, to retain all or part of the security deposit and recovery of the filing fee. The Tenant is seeking a monetary order for the return of the security deposit and recovery of the filing fee and the return of the Tenant's personal property.

Both parties attended the hearing by conference call and gave testimony.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to an order to retain the security deposit?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order for the return of personal property?

Background and Evidence

This Tenancy began on December 31, 2009 on a fixed term tenancy until October 31, 2010 and then thereafter on a month to month basis as shown in the Landlord's submitted copy of the signed tenancy agreement. No condition inspection report for the move-in or move-out was completed.

Both parties agreed that the security deposit of \$425.00 was paid on December 26, 2009. Both parties agree that the Landlord received the forwarding address in writing from the Tenant on September 29, 2011.

The Landlord states that the Tenant vacated the rental unit on October 7, 2011 which was enforced by the Bailiffs with a writ of possession obtained on October 4, 2011. The Landlord has submitted copies of the order of possession (which gives possession to the Landlord on September 30, 2011) and the writ of possession (which was endorsed as enforced by the bailiffs). The Tenant states that she vacated the rental unit on October 2, 2011 and went back on October 5, 2011 to finish cleaning the rental unit. The Landlord states that she received the keys to the rental unit in the mail near the end of December of 2011. The Tenant states that these were extra keys. The Landlord

disputes this stating that no extra keys to the rental unit have been received from the Tenant prior and that this is the only set of keys returned by the Tenant.

The Landlord is seeking recovery of the writ of possession application cost of \$120.00 and bailiff costs of \$847.11. The Landlord has submitted copies of the Vancouver Law Courts filing fee and the Bailiffs invoice for these amounts. The Tenant disputes this stating that there was no need as she had vacated the rental unit.

The Landlord is also seeking the replacement cost of \$950.00 for a water tank. The Landlord has submitted an invoice from Eaton's Commercial and Residential Services. The invoice states that the old tank valve was leaking gas due to some damage on the valve, which was "out of the ordinary". The Landlord states that the water tank was only 6 years old. The Tenant disputes this stating that there has been ongoing gas smells coming from the water tank since she moved in. The Landlord disputes this stating that the Tenant entered into the Tenancy with full knowledge of any deficiencies in the rental and that they have never received any notices of any gas leaks. The Landlord has also provided documentary evidence that the Tenant enjoyed her time at the rental unit with no issues by providing a letter from the Tenant. The Landlord has provided a signed addendum to the tenancy agreement listing any issues by both parties at the beginning of the tenancy. Both parties agreed that no condition inspection report for the move-in or the move-out was completed by both parties.

The Landlord is seeking recovery of \$79.00 for an electric space heater. The Tenant states that she is unaware of where this item is and that over her tenancy it could have been sold/ disposed of, but does not dispute that she received it from the Landlord. The Landlord relies on a kijiji internet ad for an equivalent model. The Landlord has not replaced this item. The Landlord also refers to the addendum agreement which refers to an electric radiator heater loaned to the Tenant at the beginning of the tenancy which was to be returned at the end as stated. The Landlord refers to the addendum to the signed tenancy agreement.

The Landlord is seeking recovery of \$125.00 for a used stove, \$150.00 for a used washer and dryer and a clay planter for \$40.00. The Landlord relies on kijiji website ads for the used replacement cost estimates. The Landlord has not replaced these items. The Tenant states that she does not have the listed items. The Tenant states that the washer and dryer were returned to the Landlord after the move-out as well as other items reported missing. The Landlord disputes this stating that the items were returned and placed next to the garbage containers in the alley. The Landlord states that she was unable to move the items right away and within 30 minutes of the photograph taken by the Landlord and submitted as evidence, the washer and dryer were taken. The Landlord argues that the Tenant failed to properly return the items on to the Landlord's

property and that the Tenant is still responsible for the washer and dryer as shown in the submitted addendum to the signed tenancy agreement.

The Tenant is seeking the return of the \$425.00 security deposit and the return of 3 personal items left on the property. The items listed are a 24inch ceramic planter that was left in the yard, a dry shop vac and a bag of seeds left in the garage. The Tenant states that these were items that she was unable to retrieve during the move because she states that the Landlord locked the garage door preventing her from removing them. The Landlord disputes this stating that the Tenant has access through a side door which enters into the garage and then into her basement rental unit. The Landlord also states that the Tenant completed her move-out through this door and that the Landlord is not aware of or in possession of these items.

Analysis

As both parties have attended the hearing and have made detailed reference to the evidence submitted by other party, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

I find that the Landlord has established a claim for the recovery of the \$120.00 Vancouver Law Courts Supreme Court Filing fee for a writ of possession. Likewise, I am satisfied that the Landlord is entitled to recovery of Bailiff costs of \$847.11 as shown in the submitted invoice. The Tenant's own direct testimony contradicts her dispute. The Tenant failed to vacate the rental unit until October 7, 2011. The Order of Possession was effective September 30, 2011 requiring the Landlord to seek a writ of possession and bailiff services to enforce it.

The Landlord's claim for \$950.00 for the recovery of a water tank replacement has not been established. The invoice submitted by Eaton's Commercial and Residential Services which is relied upon by the Landlord states, "old tank valve was leaking gas due to some damage on valve, out of ordinary". I find that the Landlord has failed to provide any evidence of what "out of the ordinary" is in detail. There is no evidence that the Tenant was negligent. This portion of the Landlord's claim is dismissed without leave to reapply.

I find that the Landlord's claim for the recovery of \$79.00 for an electric radiator heater has been established. Although the Landlord has not replaced this item, she relies on a kijiji internet ad for a used heater as well as the addendum to the signed tenancy agreement which states that a heater was provided to the Tenant and was to be returned at the end of tenancy. The Tenant is entitled to recovery of this used heater cost of \$79.00.

The Landlord has established a claim for the used stove for \$125.00 and the clay planter for \$40.00 and the washer and dryer units for \$150.00. I find that on a balance of probabilities that I prefer the evidence of the Landlord over that of the Tenant. The Landlord has established her claim for these items. The Tenant was responsible for the removal of the washer and dryer and I find that the responsibility lies on the Tenant to properly return the washer and dryer and not to leave it next to the garbage bins in the alleyway as shown in the submitted photographs. The Tenant should have placed the items well within the property line.

I find that the Tenant has failed to establish a claim for the return of personal items as listed above. The Landlord disputes having any of the items. I find on a balance of probability that the Tenant has failed to establish a claim for the return of these items. The Tenant has not proven that the Landlord is in possession of these items and as such, I dismiss this portion of the Tenant's application.

The Landlord has established a total monetary claim for \$120.00 writ of possession application fee, \$847.11 bailiff costs, \$79.00 for a used electric heater, \$125.00 for the replacement of used stove, \$150.00 for a used washer and dryer and \$40.00 for a clay planter. The total monetary amount established by the Landlord is \$1,361.11. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$425.00 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$986.11. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$986.11.
The Landlord may retain the security deposit.

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: January 04, 2012.

Residential Tenancy Branch