

DECISION

Dispute Codes:

MNSD, RPP, FF

Introduction:

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit; an Order requiring the Landlord to return personal property; and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Tenant withdrew the application for the return of the security deposit, and the Application for Dispute Resolution was amended accordingly.

Both parties were represented at the hearing. They were given the opportunity to present oral evidence and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is there a need to issue an order requiring the Landlord to return a vacuum cleaner that is owned by the Tenant?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy ended on April 30, 2013 and that the Tenant with the initials "E.W." participated in a condition inspection on April 30, 2013, and that she signed a condition inspection report on that date.

A copy of the condition inspection report was submitted in evidence, in which the Tenant with the initials "E.W." acknowledged that she has removed all her personal possessions from the rental unit.

The Tenant with the initials "K.B." stated that the Tenant with the initials "E.W." told the Tenant there was a vacuum cleaner and a few personal possessions left inside the rental unit at the end of the tenancy. She stated that the Tenant with the initials "A.M." returned to the rental unit on April 30, 2013 after the condition inspection report had been completed and was told that the vacuum cleaner had been discarded.

The Agent for the Landlord stated that she completed the condition inspection report with the Tenant with the initials "E.W."; that no personal items were left inside the rental unit after the inspection report

was completed; that a large amount of garbage and some personal items were left outside the rental unit by the Tenant(s) at the end of the tenancy; and that she did not see a vacuum cleaner inside or outside of the rental unit at the end of the tenancy.

Analysis

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for that loss. In these circumstances, the burden of proof rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that a vacuum cleaner was left in the rental unit at the end of the tenancy. I favoured the testimony of the Agent for the Landlord, who stated that a vacuum cleaner was not left in the rental unit, over the testimony of the Tenant, who stated that it was left in the rental unit, primarily because the testimony of the Tenant was based on hearsay evidence, which is generally considered less reliable than direct testimony.

In determining that the Tenant submitted insufficient evidence to establish a vacuum cleaner was left in the rental unit I was also influenced by the absence of oral or documentary evidence from the Tenant with the initials "E.W.", who allegedly informed the other Tenants that it was in the rental unit when she left.

In determining that the Tenant submitted insufficient evidence to establish a vacuum cleaner was left in the rental unit I was also influenced by the condition inspection report, which corroborates the Agent for the Landlord's statement that all of the Tenant's personal property had been removed.

As the Tenant has failed to establish that a vacuum was left in the rental unit, I dismiss the Tenant's application for an order requiring the Landlord to return the vacuum.

I find that the Tenant has failed to establish the merits of the claim and I therefore dismiss the application to recover the fee for filing the Application.

Conclusion

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 30, 2013

Residential Tenancy Branch

