

DECISION

Dispute Codes OPR MNR MNDC FF
 CNR MNDC LRE FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution by the Tenants and the Landlord.

The Landlord applied to obtain an Order of Possession and a Monetary Order for unpaid rent and or utilities, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenants.

The Tenants applied to cancel a Notice to End Tenancy for unpaid rent and a Monetary Order for money owed or compensation under the Act, to order the Landlord to suspend or set conditions on the Landlord's right to enter the rental unit, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Landlord to the Tenants, was not done in accordance with section 89 of the *Act*, as they were posted to the Tenants' door, however the Tenants confirmed receipt of the hearing documents.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served in person by the Male Tenants daughter to the Landlord on June 13, 2009. The Landlord confirmed receipt of the hearing package.

The Tenants confirmed receipt of the Landlord's evidence on July 13, 2009.

The Landlord testified that he had not received a copy of the Tenants' evidence, which they argued was sent to the Landlord via registered mail on July 10, 2009.

The Landlord and Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to cancel a notice to end tenancy for unpaid rent, a Monetary Order, and an Order to have the Landlord comply pursuant to sections 29, 46, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began February 1, 2009 and was scheduled to expire on August 1, 2009. Rent was payable on the first of each month in the amount of \$1,300.00. The Tenants paid a security deposit of \$650.00 on December 11, 2009. The tenancy ended on June 23, 2009 when the Tenants vacated the rental unit after being issued a 10 Day Notice to End Tenancy for Unpaid Rent. These facts are not in dispute.

Landlord's Claim

The Landlord has withdrawn his request for an Order of Possession as the Tenants vacated the rental unit on June 23, 2009.

The Landlord has claimed \$1,300.00 for unpaid rent for June 2009 and \$1,300.00 for loss of rent for July 2009. The Landlord testified that the Tenants failed to pay rent for June 2009 and that the Landlord issued a couple of 10 Day Notices to End Tenancy but that only the most recent notice dated June 15, 2009, was the only notice completed correctly.

The Tenants confirmed that they did not pay June 2009 rent and that they received the notices posted to their door.

The Landlord testified that he has not been able to re-rent the unit as of yet despite his advertisement in the Buy & Sell to rent the unit for \$1,800.00. The Landlord stated that the Buy & Sell has an on-line advertisement and that the ads run for 3 weeks. The Landlord did not know when he placed the advertisement and did not know if or when the ad was set to expire.

The Tenants argued that the Landlord hasn't tried to re-rent the unit as he has had the property up for sale since the first week of June 2009.

The Landlord confirmed that he has had the property listed for sale since the beginning of June 2009.

The Landlord has claimed \$590.00 for utilities which is comprised of \$250.00 for wood, \$300.00 for propane, and \$40.00 for satellite TV programming.

The Landlord argued that he had a verbal agreement with the Tenants that they would replace the wood they used.

The Tenants argued that they purchased their own supply of wood to heat the home with and that they had submitted a receipt in evidence to support their argument.

The Landlord advised that he had a verbal agreement with the Tenants that they would refill the propane tank as required or at the end of the tenancy. The Landlord testified that he has not refilled the propane tank as of yet and that \$300.00 was an estimate of what it would cost to refill the tank. The Landlord stated that the propane was used to run the kitchen stove/oven and the clothes dryer.

The Tenants argued that they never had any discussions about refilling the propane tank and that they thought it was an item included in their tenancy.

The Landlord has claimed \$40.00 for satellite TV programming, \$20.00 for June and \$20.00 for July, 2009, but has requested to amend his claim to \$10.00 as he removed the receiver on June 14, 2009. The Landlord states that he forgot to remove the remote at the time he removed the receiver but that he would claim for this item in a future claim. The Landlord stated that he had a verbal agreement with the Tenants that they would pay the programming fee of \$20.00 per month if they wanted to use the satellite TV and that the tenancy agreement provided only the equipment for their use and not the monthly programming.

The Tenant's argued that they didn't have an agreement with the Landlord to pay the month programming however they did pay \$20.00 per month from the on-set of the tenancy for this service. As for the remote control the Tenants stated that it was left at the rental unit when they moved.

The Landlord requested that the hearing deal with the removal of the Tenants' possessions that were left behind after their move. The Landlord claims that the Tenants left articles piled up on the carport, scattered on the lawn, and throughout the house.

The Tenants argued that they did not leave items scattered on the lawn but that they did leave articles stacked neatly in the carpet and put a sign on the pile marked "SOS" as they had called the SOS society to come and pick up the items and that the only items they left in the house were two couches. The Tenants testified that they felt they had to move out of the rental unit quickly as the relationship between them and the Landlord had become volatile and they feared for their safety.

The Landlord testified that he supplied picture evidence to prove that there were articles strewn throughout the yard and house and that there was a large mattress left along side the couches and other articles as displayed in the pictures.

The Landlord argued that the SOS Society could not access the articles in the carport as he had closed the gate and they would not be able to gain entry.

After a brief discussion the Landlord agreed to call the SOS Society to make arrangements for them to pick up the articles and the Landlord would dispose of all remaining articles in the landfill.

Tenants' Claim

The Tenants have withdrawn their request to cancel a notice to end tenancy and to set conditions on the Landlord's access to the rental unit as the Tenants have vacated the rental unit.

The Tenants have claimed \$500.00 for moving and cleaning services which they argue they incurred when the first moved into the rental unit. The Tenants testified that on the day they were to move into the rental unit the Landlord had not moved his possessions out of the house nor had he cleaned the home. The Tenants stated that when they arrived at the rental unit the Landlord was still moving his possessions into the living room and hallway which made it impossible for the Tenants to off load all of their possessions.

The Landlord confirmed that he had not moved out of the rental unit completely by the time the Tenants showed up at the rental unit. The Landlord argued that they had not set a specific time of day that the Tenants would take possession and that he left his possessions in the living room and hallway of the rental unit and asked the Tenants to unload their articles into the bedrooms and leave the rest of their articles until the next day.

The Tenants testified that the Landlord left the rental unit, leaving it up to the Tenants to pack and move all of the Landlord's possessions into the carport and that it took them approximately 25 hours to finish packing and moving the Landlord's possessions and to clean the rental unit before they could unpack their possessions.

The Landlord confirmed that the Tenants agreed to move out and pack his articles and that he returned at a later date to move his articles from the carport to storage on the property.

The Tenants claim that they had to incur an additional \$300.00 charge for truck rental as they were forced to keep their possessions in the truck over night as they worked on packing and moving the Landlord's possessions out of the rental unit.

The Tenants testified that their original agreement was that the Tenants would maintain the yard but that after researching the *Residential Tenancy Act* they found out that if the Landlord resided on the property it would be the Landlord's responsibility to maintain the yard.

The Landlord confirmed that he had a verbal agreement with the Tenants that the Tenants would maintain the yard work and that they would be allowed to work the blueberries and sell them as they saw fit to do so.

The Tenants are seeking \$1,000.00 in compensation for the time they maintained the blueberry crop. The Tenants advised that they moved out of the rental unit before the blueberry crop was ready to go to market and that they were supposed to be entitled to the profits of the blueberry crop. The Tenants argued that they had a verbal agreement with the Landlord that they could manage the blueberry crop as a commercial operation and harvest the blueberries for profit.

Both the Landlord and Tenants confirmed that the verbal agreement to work the blueberry crop was separate and apart from the tenancy agreement.

The Tenants are seeking a reimbursement of \$80.00 for the amount they paid the Landlord for satellite TV programming. The Tenants argue that their tenancy agreement included satellite TV and that they should not have been charged \$20.00 per month for programming.

The Landlord argued that the tenancy agreement covered only the equipment and that he had a verbal agreement with the Tenants whereby they would pay \$20.00 per month for satellite TV programming.

The Tenants confirmed that they paid the \$20.00 per month for satellite programming since the onset of the tenancy.

The Tenants are also seeking compensation for when the Landlord accessed their rental space without notice. The Tenants argued that they found the Landlord in the basement of the rental unit and in the greenhouse, looking into the bathroom of the house while someone was taking a shower, without proper notice.

The parties confirmed that the rental unit was a two level home with a separate basement and that the access to the basement was from the outside and that you could not access the main living area of the home from the basement. The rental unit was located on 16 acres of land and the rental agreement included the full house (basement and two upper levels, the carport, and the greenhouse).

The Tenants testified that they had discussions with the Landlord about his illegal access and requested that he not access the rental unit unless he provided proper notice.

The Landlord confirmed that he entered the basement without proper notice, but that he only wanted access to his power washer that he had stored in the basement. The Landlord also confirmed that he accessed the greenhouse without proper notice but that he was checking for the presence of marihuana plants and not looking into the bathroom.

Both the Tenants and the Landlord confirmed that after their discussion about access that the Landlord provided notice before entering the rental unit.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms can not be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Landlord's Claim

Unpaid Rent – The Tenants have admitted to not paying June 2009 rent and as such are in breach of section 26 of the *Residential Tenancy Act* which stipulates that rent is

due under the tenancy agreement, whether or not the landlord complies with this Act. Based on the aforementioned I find that the Landlord has proven the test for damages as listed above and I hereby approve his claim for unpaid rent of \$1,300.00 for June 2009.

Loss of Rent – The Landlord has claimed \$1,300.00 for loss of rent for July 2009 as he has not been able to re-rent the unit. Although the tenancy ended due to the Tenants' breach of section 26 of the *Act* for not paying the rent, I find that by trying to re-rent the unit at \$1,800.00 per month, \$500.00 higher than what it was previously rented for, the landlord has failed to mitigate or minimize his losses as required by section 7 of the *Act*. One could argue that had the Landlord advertised the rental unit at \$1,300.00 he may have been able to rent the unit and not suffer a loss. Given the testimony that the property is up for sale and the Landlord's lack of knowledge as to when he posted the advertisement or when it would expire, I find that the Landlord has failed to prove that he suffered a loss based solely on the Tenants' actions and I hereby dismiss the Landlord's claim for loss of rent, without leave to reapply.

Utilities – The Landlord has claimed \$250.00 for a verbal agreement that the Tenant's would pay for wood used. The Tenants provided documentary evidence in support of their claims that they paid for their own supply of wood. As described above verbal agreements are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss as listed above and I hereby dismiss the Landlord's claim without leave to reapply.

The Landlord has claimed \$300.00 for propane. The Landlord advised that this amount is an estimated amount to refill the tank and that he has not refilled the tank as of yet. The propane was used to operate the stove/oven and the clothes dryer. The tenancy agreement stipulates that the stove and oven and laundry (free) are included in the rent. Based on the aforementioned I find that the Landlord has failed to prove the test for damages, as listed above, and I hereby dismiss his claim without leave to reapply.

The Landlord's claim of \$40.00 for satellite was reduced by the Landlord to \$10.00. Both parties admitted that the \$20.00 per month was paid towards satellite TV programming since the on-set of the tenancy and that the Landlord removed the satellite receiver mid June and is claiming \$10.00 for the first part of June. A significant factor in my decision for the satellite programming is credibility of the Tenants' testimony. In judging credibility I am guided by the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the Landlord over the Tenants in relation to the agreement about satellite TV programming. Based on the above I find that there was a verbal agreement where the Tenants would pay the Landlord \$20.00 per month for satellite TV programming and that the Tenants owe for ½ the month of June 2009. I hereby approve the Landlord's claim of \$10.00 for satellite TV programming.

Discarding of Tenants' Possessions – The Tenants have admitted to leaving possessions at the rental unit for which they do not wish to gain access or pick up and that they had made arrangements for these possessions to be picked up by a local charity, but that the Landlord closed the gate preventing the charity organization from gaining access. I find that the Landlord and Tenants came to a mutual agreement whereby the Landlord would pile all of the remaining Tenants' possessions into the carport and the Landlord would make arrangements with the charity organization to pick up what ever articles they wanted and that the Landlord would discard any remaining articles into the landfill.

Filing Fee – As the Landlord has been primarily successful with his application I find that he is entitled to recover the cost of the filing fee from the Tenants.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

| | |
|---|-------------------|
| Unpaid Rent for June 2009 | \$1,300.00 |
| Utilities – Satellite programming for June 2009 | 10.00 |
| Filing fee | 50.00 |
| Sub total (Monetary Order in favor of the landlord) | \$1,360.00 |
| Less Security Deposit of \$650.00 plus interest of \$0.56 | -650.56 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$709.44 |

Tenants' Claim

Cancel a Notice to End Tenancy – The Tenants have withdrawn their request to cancel the notice to end tenancy for unpaid rent, as the Tenants have vacated the rental unit.

Move-In Cleaning and Expenses – The Tenants have claimed \$500.00 for 25 hours of labor required to pack and move the Landlord's possessions out of the rental unit and to clean the rental unit before they could unpack and take full possession. The Landlord admitted that he had not fully cleaned or vacated the rental unit by the time the Tenants showed up but that a set time had not been set to turn over possession.

A significant factor in my decision for the move-in cleaning expenses is credibility of the Landlord's testimony. In judging credibility I am guided by the quote listed above and in the circumstances before me, I find the version of events provided by the Tenants to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the Tenants over the Landlord in relation to the events that took place when the Tenants showed up at the rental unit to take possession. Based on the

aforementioned I find that the Tenants have proven the test for damage and loss, I hereby approve the Tenants' claim for \$315.00 (21 hours at \$15.00 per hour)

Moving Truck – The Tenants claim that they incurred an additional \$300.00 charge for keeping the moving truck over night when they were delayed in off loading their possessions into the rental unit. The Tenants did not provide documentary evidence in support of their claim and as a result I find that the Tenants have failed to prove the test for damage and loss and I hereby dismiss their claim without leave to reapply.

Lawn Maintenance – Both the Landlord and Tenants admitted to having a verbal agreement whereby the Tenants would look after the yard maintenance. Although the *Residential Tenancy Policy Guideline* suggests that it would be a Landlord's responsibility if the Landlord resides on the same property, this does not prevent parties from coming to other agreements. Based on the aforementioned I find that the Tenants have failed to prove their claim for damage or loss and dismiss their application for \$500.00 yard maintenance without leave to reapply.

Blueberry Maintenance – Both parties testified that their agreement with relation to the maintenance of the blueberries was a commercial agreement separate from the tenancy agreement. Based on the aforementioned I hereby dismiss the Tenants claim of \$1000.00 for blueberry maintenance for want of jurisdiction.

Landlord's Access to Rental Unit – I not that the Tenants did not list a monetary amount in relation to this claim and that the Tenants have withdrawn their request for an order to suspend or set conditions on the Landlord's access to the rental unit as they have vacated the unit.

Filing Fee – The Tenants have been partially successful in their claim and I find that they are entitled to recover the cost of the filing fee from the Landlord.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

| | |
|--|-----------------|
| Move-in Cleaning and Packing of Landlord's possessions | \$320.00 |
| Filing fee | <u>50.00</u> |
| TOTAL AMOUNT DUE TO THE TENANTS | \$370.00 |

Off-Set Claims

I hereby Order the Monetary Order owed to the Tenants in the amount of \$370.00 be deducted from the Monetary Order owed to the Landlord in the amount of \$709.44 leaving a balance payable to the Landlord in the amount of \$339.44 (\$709.44 - \$370.00).

Conclusion

I HEREBY FIND that the Landlord is entitled to a Monetary Order. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$339.44. The order must be served on the Tenants and is enforceable through the Provincial Court 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: July 17, 2009.

Dispute Resolution Officer