

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD, OPR, & CNR

### Introduction

Some written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to have a section 46 Notice to End Tenancy cancelled, and a request that the respondent pay \$150.00 for hook-up charges. The tenants are also requesting that the respondent landlord bear the dollars zero cents cost of the filing fee that they paid for their application for dispute resolution.

The landlord's application is a request for an Order of Possession based on the Notice to End Tenancy for non-payment of rent, and a request for a monetary order for \$2300.00.

The request to have a Notice to End Tenancy cancelled and the request for an Order of Possession are no longer needed because the tenant has vacated the rental unit. This decision therefore only deals with the monetary portion of the claims.

### Tenants application

#### Background and Evidence

The tenant testified that:

- When they entered into the rental agreement with the landlord the landlord informed them that she had no intentions of selling the rental unit in the near future.
- The reason this was important to them is because they wanted a long-term tenancy and did not want to have to move after only a short period into the tenancy.
- They signed the tenancy agreement which did state that it was month-to-month tenancy, and although this raised some red flags they took the landlord at her word that she was not planning to sell the rental unit.
- In March 2010 they found out the landlord was planning to sell the unit, and therefore on March 30 or 31st 2010 they gave the landlord Notice to End Tenancy at the end of April 2010 as they did not want to be forced out if the property sold.
- That notice was sent by e-mail as this was the method of communication they had had with the landlord throughout the tenancy.

The tenants are therefore requesting an order for \$150.00 to cover the cost of utility hook-ups that they have had to pay a second time in such a short period. They are also asking that the landlord be ordered to bear the \$50.00 cost of the filing fee that they paid for their application for dispute resolution.

### Analysis

It is my decision that the landlord is not liable for the tenant's utility hook up costs. This was a month-to-month tenancy and there was no stipulation in the tenancy agreement that the landlord would not sell the rental unit.

Further even if the landlord did sell the rental unit the tenants would be in the same position as they were prior, as the present landlord or the new owners both have the right to give a two month Notice to End Tenancy for landlord use.

Therefore if the tenants choose to end the tenancy they must bear the cost the result from that choice.

### Conclusion

The tenant's application is dismissed in full without leave to reapply.

### Landlords application

#### Background and Evidence

The landlord testified that:

- The tenants did give notice to end the tenancy by e-mail however the e-mail is dated April 1, 2010, and therefore was served late.
- The tenants subsequently failed to pay the full rent for the month of April 2010 and therefore she had served them with a 10 day Notice to End Tenancy.
- She took time off work to go to the Residential Tenancy Branch to file her claim for dispute resolution.
- She also had to pay someone to show the home.
- She had spent two hours producing and sending notices to be served on the tenants.
- She spent two hours on phone calls and e-mails back and forth to potential tenants.
- She had to go from Victoria to Salt Spring Island to do the final condition inspection.

The landlord is therefore requesting a reduced claim as follows:

One hour off work	\$24.00
Producing and sending notices to agent	\$40.00
Time spent on phone calls and e-mails	\$40.00
Ferry costs	\$39.60
Gas	\$20.00
Time spent to do condition inspection	\$80.00

Filing fee	\$50.00
Total	\$373.60

The landlord therefore requests that she be allowed to retain \$373.60 of the security deposit to cover this claim.

### Analysis

It is my decision that the landlord has not shown that the Notice to End Tenancy was served late. She claims of the notice was received on April 1, 2010 however she has provided no evidence in support of that claim, therefore it is basically just her word against that of the tenant, and the tenants claim to the notice was sent on March 30 or 31st 2010.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Further the landlord has not supplied any evidence in support of the amounts she is claiming. There is no evidence of having paid out any money, there is no evidence of having lost any income, and she supplied no record of the amount of time she claims to have spent dealing with the landlord tenant issues.

Therefore it is my decision that I will not allow any of the landlords claim.

### Conclusion

The landlords request to retain a portion of the tenant's security deposit is dismissed in full without leave to reapply and I have issued an order for the landlord to return the full security deposit of \$975.00 to the tenants.

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: May 21, 2010.

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Dispute Resolution Officer