



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – SS, RPP, O

For the landlord – MND, MNR, MNSD, (MNDC), FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek an Order for the return of their personal property and other issues. At the outset of the hearing the tenants withdrew their application for an Order for substitute service of the hearing documents.

The landlords seek a Monetary Order for unpaid rent; for damages to the rental unit, site or property and has amended their claim to add the section for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), Regulations or tenancy agreement. The landlords also seek to keep the tenants security deposit and to recover their filing fee.

I am satisfied that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to an Order for the landlord to return their personal property?
- Are the landlords entitled to a Monetary Order for?
 - a) Unpaid rent

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- b) Damage to the rental unit
- c) Money owed or compensation for damage or loss
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on March 01, 2010. Rent for this unit was \$900.00 per month and was due on the first of each month. The tenants paid a security deposit of \$450.00 sometime around the beginning of their tenancy.

The tenant's application

The tenant's testify that they have not paid rent for June or July, 2010. They state they had to leave the rental unit on June 08, 2010 to take care of some family business and then returned on June 16, 2010. They left again and returned on June 26, 2010 to pick up some more clothing and food items and did not return until July 17, 2010. The tenants testify that they contacted the landlord on July 09, 2010 to discuss ending the tenancy and to arrange to collect their belongings from the unit. The tenants claim the landlord told them that that weekend would not be a good time so they rented a trailer the following weekend of July 17, 2010 and when they arrived at the rental unit they found the landlord had changed the locks. The tenants state when they looked through the windows of the unit most major items belonging to them had been removed.

The tenant's testify that they spoke to the landlord who told them their belongings had been removed and placed in storage. They claim he told them if they pay the \$900.00 outstanding rent they could have their belongings back. The tenants claim they went to the Police but were advised to file an application with the Residential Tenancy Office. The tenants claim the landlords never served them with a Notice to End Tenancy and they had not abandoned the rental unit or their belongings.

The tenants also claim that they had written out a Notice themselves to end the tenancy but had not given this to the landlord. They state that this was left in their laptop bag with other personal

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documents. They claim the landlords have filed a copy of this letter in their evidence package and the tenants state the landlords must have taken this letter from their laptop bag without permission. The tenants seek an Order for the return of their personal property.

The landlords testify that the tenants served them with a hand written notice to end the tenancy and this was left in the landlords door frame around the beginning of June. The landlord's testify that the tenants failed to pay rent for June and the tenants were absent from the property. Due to the non payment of rent for June, 2010 and then July, 2010, the notice to end tenancy and with the removal of some of their personal belongings including bedding and food the landlord assumed the tenants had abandoned the rental unit at the end of June, 2010. The landlords testify that they attempted to contact the tenants using the phone numbers provided by them. They found the male tenant's number was no longer in service and they received no answer at the other numbers provided.

The landlords testify that they stored the tenant's belongings in accordance with the *Act*. The landlord states he spoke to the male tenant on July 09, 2010 and was told by him that they had moved to Campbell River. He states the tenant told him they wanted to come and collect their belongings and the landlord states he told the tenant he would need to get some notice of when they were coming as he needed to get access to the storage. He claims the tenants then just turned up on July 17, 2010 and he could not access the storage unit that weekend. The landlord states he did tell the tenants they owed rent for June, 2010 and would have to pay the landlords costs involved in removing and storing their belongings.

The landlord's application

The landlords seek to recover rent for June and July, 2010 to the sum of \$1,800.00. The landlord also seeks to recover \$40.00 in bank charges because the rent cheque given to them from the tenants for June's rent was returned by the bank.

The landlord testifies that they paid \$250.00 to store the tenant's belongings from July, 2010 and also seek the sum of \$200.00 for their costs in having to pack and move all the tenant's

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belongings. The female landlord states she had to use two of her vacation days from work for this and incurred two round trip ferry costs of \$60.00 each way to a total sum of \$240.00.

The tenants do not dispute that they owe rent for June, 2010. The tenants do dispute the landlords claim for July rent as they state the landlord locked them out of the rental unit on July 09, 2010 and consequently this ended their tenancy. The tenants state the landlord did not attempt to contact them and they had dialled a number in Vancouver which was not the tenant's number and the landlords did not leave a message with the tenants mother on her answering machine.

The tenants also dispute the landlords claim for storage costs and for the landlords time and ferry costs to pack and remove their belongings as they state they did not abandon the rental unit and returned on July 17, 2010 to pack their own belongings and to clean the rental unit.

The landlords seek to keep the tenants security deposit in payment for the cleaning of the interior and exterior of the rental premises and for the replacement of the hand held shower.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for the return of their personal property; I find on a balance of probabilities that the tenants did give the landlords the written notice to end tenancy and find no evidence to suggest that the landlords removed this notice from the tenants laptop bag. Therefore, the landlord are able to act on this information in accordance to section 24 of the regulations and consider the tenants property to have been abandoned. Consequently the tenants are entitled to the return of their personal property in accordance with section 26 of the regulations which states:

- 26 (1)** If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to

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- (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing and storing the property, and
 - (ii) a search required to comply with section 27 [*notice of disposition*], and
 - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

Consequently, I find the landlords have established their claim of **\$450.00** for the removal and storage of the tenant's belongings and they are entitled to a monetary award for this amount pursuant to section 67 of the Act.

With regard to the landlords claim for \$240.00 for ferry costs to travel to the rental property to remove and pack the tenants belongings; I find the landlord has not established their claim for this section. They have not provided evidence in the form of ferry receipts to show the actual costs incurred or which landlord did the required packing and removal of the tenant's belongings. Consequently, this section of the landlords claim is dismissed.

With regard to the landlords claim for unpaid rent; Section 26 of the Act states that tenants must pay rent on the day it is due whether or not the landlord has complied with the Act, regulations or tenancy agreement. Therefore, I find the tenants did not pay rent for June, 2010, I further find the tenants did not pay rent for July, 2010 and did not provided the landlords with the correct notice period i.e. written notice must be given the day before the day of the month that rent is due in order to take effect on the last day of the following month. As I have determined that the Notice was left on the landlords door around the beginning of June, 2010 the tenancy could not legally end until July 31, 2010. Consequently I find the tenants must pay the sum of **\$1,800.00** to the landlord for unpaid rent for June and July, 2010 pursuant to section 67 of the Act.

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With regard to the landlord's claim of \$40.00 in NSF fees, the landlord has provided no evidence to show that they have been charged an NSF fee from the bank or that the tenancy agreement contained a clause which states that the landlords will charge the tenants for any cheques returned from the bank. Consequently, I find the landlords are not entitled to charge the tenants \$40.00 and this section of their claim is also dismissed.

The landlords have applied to keep the tenants security deposit to cover costs to clean the rental property and to replace a hand held shower. The landlords have provided a letter from a witness concerning the condition of the rental unit at the start and end of the tenancy and have provided a condition inspection report for the inspection conducted at the start of the tenancy. Section 36 (2) of the Act states: unless a tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit for damages is extinguished if the landlord has not conducted a move out condition inspection. As I have found the tenants did abandon the rental unit I find the landlords were not required to conduct the move out condition inspection. It is therefore my decision that the landlords are entitled to keep the tenants security deposit for costs incurred by them in cleaning the rental unit at the end of the tenancy. However, I find the cost claimed of \$450.00 to be extreme without any further evidence from the landlords to support their claim for cleaning or damages to the shower. Consequently, I find the landlords are entitled to keep \$200.00 of the deposit to cover cleaning costs. The remainder of the deposit may be offset against unpaid rent pursuant to section 38(4)(b) of the *Act*.

As the landlords have been largely successful with their claim I find they are entitled to recover the **\$50.00** filing fee paid for this application from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for June and July, 2010	\$1,800.00
Cleaning of rental unit	\$200.00
Subtotal	\$2,450.00
Less security deposit	(-\$450.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,050.00



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Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,050.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND the tenants are entitled to recover their personal belongings after the settlement of costs incurred from the landlord as detailed above in accordance to section 26 of the Residential Tenancy Regulations, otherwise the landlord is entitled to dispose of the tenants belongings pursuant to section 25 or 29 of the Regulations.

The tenant's application for an Order for the landlords to return their personal property is dismissed without leave to reapply.

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: September 20, 2010.

Dispute Resolution Officer