



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNR MND FF
 MNDC MNSD RPP

Introduction

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

The Landlord filed seeking a Monetary Order to keep the security and/or pet deposit, for unpaid rent, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking the return of their security and/or pet deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for the return of their personal property.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. The Tenants did not submit documentary evidence. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. When and how did this tenancy end?
2. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?
4. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
5. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed during the hearing that they entered into a month to month tenancy agreement that began on August 1, 2011. Rent was payable on the first of each month in the amount of \$850.00 and on July 22, 2011 a security deposit of \$425.00 was credited to this tenancy. The move in inspection report was signed by both Tenants however the move out inspection was not attended nor signed by either Tenant. The Landlord did not provide the Tenants with two times to choose to attend the move out inspection nor did they issue the Tenants a final notice of move out inspection.

The Tenant affirmed he has occupied this unit since July 23, 2011, even though the tenancy agreement did not take effect until August 1, 2011 and that his roommate had occupied the unit under a different tenancy agreement prior to August 1, 2011. He argued that there was no physical move in inspection conducted and that they signed the condition inspection form in the Resident Manager's office because they had previous knowledge that the unit was in good condition because the co-tenant had already been residing there.

The Landlord could not speak first hand to what transpired with the inspections and she could only go by the documents that were submitted in evidence as she was not in attendance at the rental unit for issues pertaining to this tenancy. The Landlord was not able to provide testimony to why the condition inspection report says move out date was November 25, 2011 when the Resident Manager had signed a mutual agreement to end the tenancy effective November 30, 2011. She advised the two Resident Managers were not able to call into this hearing because one of the managers was ill and the other was with her at the hospital.

The Tenant advised that they had moved 80% of their possessions out of the unit by November 25, 2011, including all their large furniture such as their bed. They took possession of their new unit on November 23, 2011 and his roommate began sleeping at the new unit as of November 25, 2011. He continued to stay at this rental unit sleeping on a sponge on the floor until November 29, 2011 because of previous "illegal entries" by the Landlords, one of which occurred November 25, 2011. When he attended the unit November 30, 2011 to finish cleaning and pick up the rest of his possessions he found the locks had been changed and he could not enter.

The Tenant stated the Landlord entered their unit November 25, 2011, without proper notice, after which an altercation occurred and he called the police. He claims the Landlord took \$200.00 cash and his roommates disability equipment (walker and bathroom aids), and pulled their possessions from cupboards and closets during an

illegal entry. They are seeking \$3,425.00 to cover the costs of the disability equipment, assorted household items, the \$200.00 cash and the return of his security deposit of \$425.00. He provided the Landlord with their forwarding address when they applied for this dispute resolution.

The Landlord confirmed receipt of the Tenants' address by receipt of their application and argued that the security deposit was applied to their account against previous unpaid rent. In response to the Tenant's claim the Landlord advised the police searched the Resident Manager's apartment and office November 25, 2011 and they could not locate any of the Tenants' possessions. The Resident Managers called her that day and informed her of the accusations and advised her of what happened as indicated in their written submission. They did not take any of the Tenants' possessions and did not steal any cash.

The Landlord referenced her evidence and suggested that the photos were taken November 30, 2011 however she could not provide the exact date the photos were taken as that was done by the Resident Managers. When asked if the locks were changed she first stated that they were not changed. She later changed her testimony and confirmed the locks were changed but did not know which date they were changed as this would have been done by one of their staff.

The Landlord advised that it is their practise to keep tenant's possessions that are left behind in the rental units in storage for 60 days and argued there was only a wall unit left behind that would have been kept. I then asked what happened to the items displayed in the photos, to which she advised they would be in storage.

The Landlord stated there was a 10 Day Notice to End Tenancy issued November 4, 2011 and could not explain why my evidence package only provided a 10 Day Notice issued October 4, 2011. She confirmed rent payments were normally mailed directly to the Landlord from the Ministry of Social Development and that November rent was not received because the Tenant requested the payment be cancelled. She confirmed the Landlords did not take any further action and that they were not issued an Order of Possession to take possession of this rental unit. The Landlord confirmed they are seeking \$850.00 for November 2011 unpaid rent plus \$211.50 for balance owed for October 2011 rent.

The remainder of the Landlord's claim pertains to \$216.00 for cleaning, \$80.00 for carpet cleaning, \$25.00 drapery cleaning, and \$200.00 for removal of miscellaneous items left behind by the Tenants. The Landlord confirmed that the invoices provided in

their evidence were created by the Landlord and the supplier names listed on each invoice are all employees of the Landlord as they are the ones who performed the work.

In closing the Tenant advised that they decided to move out of this rental unit because they were getting non-stop eviction notices. He confirms that he owed \$75.00 plus a \$25.00 NSF fee however he wrote a cheque and dated it for November 25, 2011 but the Landlord cashed it earlier so it was returned by the bank. Upon clarification he stated that the large items were moved out of his unit November 23, 2011 and they returned November 25, 2011 to do cleaning which is when the Landlords entered their suite.

The Tenant referenced the Landlord's photographic evidence which displays some of the rooms in a clean state and others showing cleaning supplies which proves that they were in the process of cleaning.

Analysis

I have carefully considered the aforementioned and the documentary evidence submitted by the Landlord which included, among other things, photographs of the rental unit taken on approximately November 30, 2011, copies of the condition inspection report, Tenants' account reconciliation, invoices for services provided by the Landlord's staff, two mutual agreements to end tenancy, a 10 Day Notice dated October 4, 2011, a copy of a cheque from the Tenant dated October 25, 2011, the charge back from their bank dated August 23, 2011, for the \$100.00 cheque, and the tenancy agreement.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Tenant's Application

The Tenants have claimed \$3,425.00 compensation from the Landlord to cover the return of their \$425.00 security deposit, plus the lost \$200.00 cash, and \$2,800.00 for medical aids and possessions that have allegedly been stolen from their apartment.

I accept the evidence before me that the Landlords entered the rental unit November 25, 2011 and disturbed the Tenant without proper notice, which is a breach of Section 29 of the Act. That being said, there is insufficient evidence before me to support the Landlord's illegally entered the unit prior to this date or that they stole the Tenant's possessions on this or any other date. Furthermore the Tenants provided no evidence to support they owned this type of equipment or of the actual value of the items they were seeking compensation for. Therefore, I find the Tenants have provided insufficient evidence to meet the burden of proof for damage or loss, as listed above. Accordingly I dismiss their claim for \$3000.00 (\$200.00 cash plus \$2,800.00 for possessions).

Section 31 of the Act provides that a landlord must not change locks to rental property unless the landlord provides each tenant with new keys or other means that give access to the unit. I accept the Tenants' argument that when the locks were changed they still had possessions inside the unit which have either been thrown out or kept in storage.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there is insufficient evidence of a significant loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Tenants are entitled to nominal damages as a result of the Landlords changing the locks before they could remove the rest of their possessions and I award the Tenants **\$500.00** in compensation. Also, the Landlord is ordered to return any of the Tenants' possessions that are currently held in storage.

The matter of the Tenants' security deposit will be determined below in response to the Landlord's application.

Landlord's Application

The evidence before me proves the Tenants were issued a 10 Day Notice on October 4, 2011 which was originally written as \$636.50 for unpaid rent for October 1, 2011 and was changed to read \$211.50 outstanding rent with a notation that states "security deposit transferred \$425.00". The evidence further supports another 10 Day Notice was issued November 4, 2011 as November rent of \$850.00 was not paid. The Tenants did

not follow through with a dispute against either 10 Day Notice and therefore are conclusively presumed to have accepted that the tenancy ends due to this non-payment of rent, pursuant to section 5(a) of the *Residential Tenancy Act*.

Section 21 of the Act provides that unless the landlord provides written consent, a tenant must not apply a security deposit to unpaid rent. In the absence of written consent to apply the security deposit, I find that at the time the Landlord made this application the Tenants owed \$1,486.50 in unpaid rent (\$636.50 for Oct. plus \$850.00 for November) and the security deposit of \$425.00 continued to be held in trust by the Landlord.

As per the aforementioned, I find the Tenants breached section 26 of the Act which stipulates rent must be paid in accordance with the tenancy agreement. Accordingly I find the Landlords met the burden of proof and I approve their claim for unpaid rent of **\$1,486.50**.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove when the locks were changed at the rental unit and when they took possession of the unit. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof.

Section 31 of the Act provides that a landlord must not change locks to rental property unless the landlord provides each tenant with new keys or other means that give access to the unit.

As per the aforementioned, I accept that the Tenants were in the process of cleaning the rental unit when the Landlord changed the locks, without having legal possession of the unit, and therefore they breached section 31 of the Act. Consequently, I find the Landlords were faced with having to conduct the balance of the required cleaning as a result of their breach as it was their actions which prevented the Tenants from accessing the rental unit to finish cleaning. Accordingly, I dismiss the Landlord's claims for costs related to cleaning the unit for the total amount of \$521.00 (\$216.00 + 80.00 + 25.00 + 200.00)

The Landlord was partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

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

Unpaid Rent	\$1,486.50
Filing Fee	<u>25.00</u>
SUBTOTAL	\$1,511.50
LESS: Security Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
Offset amount due to the Landlord	<u>\$1,086.50</u>

OFFESET MONETARY ORDERS:

Landlord's Monetary Order	\$1,086.50
LESS: Tenant's Order	<u>- 500.00</u>
Offset Amount due to the Landlord:	<u>\$ 586.50</u>

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY ORDER the Landlord to return the Tenants' personal property that may be held in storage, pursuant to section 65(1)(e) of the *Residential Tenancy Act*.

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$586.50**. This Order is legally binding and must be served upon 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: February 15, 2012.

Residential Tenancy Branch