



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlords to return the tenants' personal property, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two landlords and the two tenants attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

The female landlord confirmed receipt of the tenants' application for dispute resolution hearing notice ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' Application.

The male tenant confirmed that the tenants did not serve the landlords with their two-page written evidence statement, which was received by the Residential Tenancy Branch ("RTB") on June 23, 2015. I advised the tenants that as they did not serve the landlords with their written evidence, as required by Rule 3.1 of the RTB *Rules of Procedure*, I could not consider this evidence at this hearing or in my decision.

The tenants requested to amend their Application to correct the male landlord's name. The male landlord consented to this amendment. In accordance with section 64(3)(c) of the *Act*, I amend the tenants' Application, which now correctly reflects the male landlord's name in the style of cause on the front page of this decision.

Issues to be Decided

Are the tenants entitled to an order requiring the landlords to return the tenants' personal property?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on March 15, 2015 and ended on June 16, 2015. Monthly rent in the amount of \$900.00 was payable on the first day of each month. The female landlord confirmed that a security deposit was not required for this tenancy. The female landlord confirmed that no move-in or move-out condition inspection reports were completed for this tenancy. The female landlord confirmed that she received a forwarding address in writing from the tenants on June 22, 2015.

The female landlord confirmed that a written tenancy agreement exists for this tenancy, which only the male tenant signed, not the female tenant or either of the landlords. Neither party provided a copy of the tenancy agreement for this hearing. The landlords confirmed that they were subletting the rental unit to the tenants. The landlords confirmed that they had a separate tenancy agreement with their own landlord. Both parties agreed that both landlords and both tenants resided in the same rental unit during the above tenancy dates.

The landlords confirmed that they issued the tenants with a notice to end this tenancy on May 31, 2015, which was effective on July 1, 2015. The landlords stated that their tenancy agreement with their own landlord was ending and so they had to end their sublease with the tenants. The landlords stated that they did not receive a response from the tenants as to whether they would be vacating on July 1, 2015 or whether they wished to stay longer and arrange it with the other landlord. The landlords indicated that the tenants vacated the rental unit on June 16, 2015, without notifying them, and only paid rent of \$400.00 for this time period. The landlords indicated that they changed the locks to the rental unit about four to five days after the tenants vacated because the tenants did not return the rental unit keys.

The tenants seek the return of their personal property, which they say the landlords kept in the rental unit and denied them access to retrieve such items. The tenants listed approximately 20 items but indicated that there could be more items that they may have missed or forgotten. The landlords stated that they retained the tenants' possessions in the rental unit but that the essential items such as food, clothing, and pets were returned to the tenants on June 16, 2015. The landlords indicated that they allowed the

tenants access to the rental unit but the tenants told them they did not have any free space to keep these items in their new unit. The landlords further advised that the tenants told them that they did not care about the property and could sell the items to recover the unpaid rent. The landlords stated that they only retained the tenants' appliances and two fish tanks as collateral until they were paid the full rent for June 2015. The female landlord confirmed that she sold the tenants' 55-gallon salt water fish tank, vacuum cleaner and popcorn machine for a total of \$370.00.

The landlords confirmed that they had not yet filed an application for dispute resolution at the RTB but intended to do so if this matter did not settle, seeking \$500.00 for the remaining unpaid rent for June 2015 as well as an additional \$240.00 in late fees charged by their own landlord and their bank. The landlords also stated that they were entitled to lost wages for stress and anxiety caused by the tenants not returning their keys as well as damages to the property caused by the tenants.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. The landlords agreed to allow the tenants access to the rental unit on July 21, 2015 and July 25, 2015, for the tenants to retrieve their personal property;
2. The tenants agreed to allow the landlords to retain their 75-gallon fresh water fish tank in full satisfaction of any unpaid rent including for June 2015, lost wages, damages, losses, and any other issues arising out of this tenancy;
3. The tenants agreed to withdraw their application to recover the \$50.00 filing fee from the landlords;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenants' Application at this hearing and any issues arising out of this tenancy;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlords' potential claims arising out of this tenancy;

6. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties testified at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties testified that they understood that the above settlement terms were legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I order the landlords to allow the tenants access to the rental unit property in order to retrieve the tenants' personal property on July 21, 2015 and July 25, 2015.

In order to implement the above settlement reached between the parties, I order the landlords to retain the tenants' 75-gallon fresh water fish tank.

The tenants' application to recover the \$50.00 filing fee is withdrawn. The tenants must bear the cost of this fee.

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 21, 2015

Residential Tenancy Branch

