



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP, OT

Introduction

On September 28, 2018, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation for a loss suffered pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking a return of personal property pursuant to Section 65 of the *Act*.

On November 1, 2018, the Tenants submitted an Amendment to their Application for Dispute Resolution seeking to increase the amount of monetary compensation they are seeking pursuant to Section 67 of the *Act*.

This Application was set down for a hearing on November 9, 2018 and was subsequently adjourned to be heard on December 21, 2018 as there was not enough time to complete the hearing initially.

Both the Tenants and the Landlords attended the adjourned hearing. However, the Tenants called in late to the hearing and subsequently exited the conference call at 9:50 AM. All in attendance provided a solemn affirmation.

At the original hearing, the Tenants advised that the Notice of Hearing package and evidence were served to the Landlords by Xpresspost. The Landlords confirmed receipt of this package on October 23, 2018 and advised that they were prepared to respond to these claims. Based on this testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served with the Notice of Hearing package and evidence.

As well, the Tenants advised that they served additional evidence with the Amendment on November 1, 2018 to the Landlord via Xpresspost. However, as the Amendment was not served in compliance with Rule 4.6 of the Rules of Procedure, I have dismissed the Amendment with leave to reapply. In addition, as this evidence served was late and not in compliance with Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this decision.

The Landlords advised that they served their evidence to the Tenants by FedEx on November 2, 2018. The Tenants confirmed receipt of this package and that they were prepared to respond to it. While service of their evidence did not comply with Rule 3.15 of the Rules of Procedure, as the Tenants had reviewed and were prepared to respond to this evidence, I am satisfied that the evidence was served. Thus, this evidence was accepted and will be considered when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to a return of their property?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 9, 2018; however, there was some dispute with respect to the end date of the tenancy. Rent was established at \$900.00 per month, due on the first of each month. A security deposit was not paid.

The Tenants are seeking compensation in the amount of **\$221.00** for a rent reimbursement from June 24 to June 30, 2018 as they contend that the rental unit was

barricaded, and they had no other option but to leave. They stated that when they came home on June 25, 2018, Tenant J.B. was attacked by the Landlord and his brothers, so he ran away. Tenant A.E. attempted to enter the rental unit later but the door was kicked in as the Landlord had been looking for stolen property related to a robbery. They returned on June 27, 2018 to find that the windows and doors of the rental unit were boarded up and they had no way to enter. They asked the Landlords for access to the rental unit and the Landlords told them to stay off the property. Without a place to live, they purchased a tent and mattress and lived in the woods until J.B.'s brother picked them up and drove them to Prince George. The Tenants submitted support letters as documentary evidence to support their position.

The Landlords advised that the local gas station had been robbed and that J.B. may have been the main suspect, so the police were called. J.B. confessed to the robbery and the Tenants ran away before the police arrived. Suspecting that there might be more stolen merchandise in the rental unit, the police kicked in the front door. After the police left, the Landlord boarded up the front door. The next day, A.E. broke the back window to enter the rental unit to collect her belongings and later contacted the Landlords to collect more of her belongings that had any substantial value. She was never advised by the Landlords that they were not allowed to return to the property. Approximately a week later, A.E.'s mother contacted the Landlords, advised them that A.E. was in the hospital due to a motorcycle accident, and asked if they could store her belongings safely until someone could retrieve the property. A.E. also contacted the Landlords and stated that she would send someone to get her belongings; however, no one ever came to collect their property. The Landlords submitted a letter from the neighbour as documentary evidence to support their position.

The Tenants are seeking compensation in the amount of **\$650.00** for replacement of a 55" TV. They stated that the front door did not ever close properly, and they informed the Landlords of this issue. As such, the Landlords' dog would be able to get into the rental unit and visit. They submit that the TV was broken when the Landlords' dog entered the rental unit and knocked it over when roughhousing with the Tenants' dog.

The Landlords advised that the screen had fallen out of the TV, that the screen was smashed to pieces, and that it appeared to have a hole in it where it had been punched.

The Tenants are seeking compensation in the amount of **\$150.00** for the cost of a tent, an air mattress, and a cooler that they had to purchase after they were forced out of the rental unit.

The Landlords questioned whether the Tenants had receipts for these purchases and stated that the Tenants advised them that they would “go to war” against the Landlords. Furthermore, the Landlords questioned why the Tenants would not ask the police or sheriffs to assist them to get back into the rental unit if they felt like they were physically and forcefully evicted illegally.

The Tenants are seeking compensation in the amount of **\$400.00** for replacement of food that they had in the rental unit as they allege that the Landlords shut off the power. A.E. stated that she had just purchased a substantial amount of food from Costco, but it was now all expired.

The Landlords advised that there was a significant storm that was responsible for the power being shut off. As well, the Landlords advised that the Tenants were able to return to the rental unit to collect what they wanted from the rental unit. Moreover, the Landlords stated that they had the Costco membership and would drive the Tenants there, so they refute the Tenants’ claims of the substantial amount of food. Finally, they stated that A.E. worked at a convenience store and was allowed to bring home free food from work.

The Tenants are seeking compensation in the amount of **\$767.00** for the cost of a moving truck and fuel for them to move to Prince George after this tenancy ended. They are also seeking an additional **\$150.00** in fuel costs. However, the Tenants were advised during the hearing that there are no provisions in the *Act* to compensate a party for their moving costs. As such, these claims were dismissed in their entirety.

The Tenants are seeking compensation in the amount of **\$320.00** for the cost of two months of their EasyHome bill. They stated that due to A.E.’s accident, she was not able to get the rest of their belongings, but the Landlords stated that their property would be safely stored. They submitted that they returned at the end of June 2018 and attempted to get the rest of their possessions; however, the rental unit was boarded up and the Landlords would not let them retrieve their items. They stated that the Landlords did not store their property properly and the furniture they rented from EasyHome was damaged by water. They stated that EasyHome attempted to contact the Landlords to repossess the furniture, but the Landlords would not return their calls. Eventually, EasyHome was allowed access to the furniture but they would not take them back due to the water damage because of the Landlords’ negligent storage practice.

The Landlords stated that the total market value of the Tenants' items was negligible as they acquired most of their belongings for free from the local church. They advised that they stored these items for four months in a garage and that the Tenants contacted them multiple times to collect their belongings; however, they never came back for them. As well, if A.E. was unable to collect their possessions, there was no mention why J.B. was unable to do this. They advised that the only possessions the Tenants paid for were the furniture from EasyHome and that this was stored in the garage as well. They advised that EasyHome contacted them and made arrangements to collect the furniture; however, it was too badly damaged due to the Tenants' negligence and EasyHome did not repossess this furniture either as it was devalued entirely. They stated that this was a purchase contract that the Tenants had with EasyHome and the Tenants should be responsible for settling this account. They advised that they disposed of most of the Tenants' belongings in September; however, they were still storing this furniture and some of items that appeared to have any value.

The Tenants are seeking compensation in the amount of **\$950.00** for the first month's rent at their new residence. In addition, they are seeking compensation in the amount of **\$300.00** for the cost of living with no belongings from June 24 to June 30, 2018. However, the Tenants exited the adjourned conference call at 9:50 AM and consequently, did not make any submissions with respect to these claims.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenants' claims for compensation, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?

- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, there is conflicting testimony surrounding the issue of how the tenancy ended. The Tenants submit that their friend was physically attacked by the Landlords and that access to the rental unit was subsequently denied by the Landlords. However, there is no evidence that this alleged assault was reported to the police, which is inconsistent with common sense and ordinary human experience. This causes me to question the reliability of the Tenants' submissions with respect to this point. Furthermore, when reviewing the Tenants' evidence, there are other inconsistencies and contradictions that cause me to doubt the credibility of the Tenants' submissions overall. Moreover, both parties agreed that the Tenants were allowed into the rental unit and that they removed many personal belongings. Consequently, based on a balance of probabilities, I find the Landlords' account of how the tenancy ended to be, more likely than not, accurate. As such, I am satisfied that the Tenants gave up vacant possession of the rental unit by abandoning it. Consequently, I do not find that the Tenants have established their claim on this point and I dismiss it in its entirety.

With respect to their second claim for compensation for the TV, the Tenants have not provided any compelling evidence that the TV they owned was equivalent to the value they are seeking. Furthermore, I find their explanation for how this was broken to be suspect, unlikely, and uncorroborated with evidence. In conjunction with the Landlords' description of the damage and based on a balance of probabilities, I am not satisfied that the TV was broken in the manner that the Tenants allege. Consequently, I dismiss this claim in its entirety.

Regarding their third claim for compensation for a tent, an air mattress, and a cooler, I do not find that the Tenants have provided much in the way of evidence supporting this claim or that they purchased these items. Furthermore, as per above, I am not satisfied that the tenancy ended as a result of the Landlords restricting access to the rental unit but ended as a result of the Tenants abandoning the rental unit of their own choice. As such, I dismiss this claim in its entirety.

With respect to their fourth claim for compensation for a loss of the food in their fridge and freezer, there is little compelling evidence that has been submitted to corroborate this loss. As the onus is on the Tenants to provide evidence to establish that compensation is warranted, I am not satisfied that they have provided substantial

evidence to support this claim, when weighed on a balance of probabilities. As such, I dismiss this claim in its entirety.

As per above, and as they were advised during the hearing, I have dismissed the Tenants' fifth and ninth claims as there are no provisions in the Act that allow for compensation for such claims. As such, I dismiss these two claims in their entirety.

With respect to their sixth claim for compensation for the EasyHome bill, the undisputed evidence before me is that the Landlords stored the Tenants' property for over three months and that the Tenants contacted the Landlords to retrieve their property, but never made arrangements to collect their personal belongings. It does not make sense to me that the Landlords would make the effort to store the Tenants' property for such an extended period of time but not allow access for the Tenants to collect. Furthermore, based on my doubts regarding the credibility of the Tenants' testimony, I find it more likely than not that the condition of their rented furniture was as a result of how they were cared for by the Tenants, rather than due to the alleged negligent storage and care of the Landlords. As such, I find that the Tenants have failed to establish their claim on this point and I dismiss it in its entirety.

With respect to their seventh and eighth claims for compensation for the first month's rent at their new residence as well as for the cost of living with no belongings from June 24 to June 30, 2018, as I am satisfied that the Tenants gave up vacant possession of the rental unit by abandoning it in late June 2018, I find that they have failed to establish the legitimacy of these claims as well. As such, I dismiss them in their entirety.

When reviewing the totality of the evidence before me, I do not find that the Tenants have provided compelling, persuasive, or reliable evidence to support the four-part test in establishing whether or not monetary compensation should be awarded. As a result, I have dismissed these claims for monetary compensation in their entirety.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution 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: January 17, 2019

Residential Tenancy Branch