



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes RPP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an Order for the landlord to return the tenants personal property and a Monetary Order to recover the filing fee.

The tenant served the landlord in person on October 16, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was 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

- Is the tenant entitled to an Order for the landlord to return her personal property?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on April 01, 2004 and ended after the landlord obtained an Order of Possession and the court ordered bailiffs to remove the tenants' belongings from the rental unit on September 10 and 11, 2009.

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The tenant is seeking an Order for the landlord to return the remainder of her belongings which the bailiffs did not remove. The tenant testifies that she had custom built shelving in the unit and a mirror which the bailiffs left behind because they were attached to the wall. The tenant places a value on these items of approximately \$8,000.00. The tenant testifies that after she was evicted she asked the caretaker of the property to return the items to her and said she would return the following week on September 18, 2009 with a truck to collect the items. The tenant testifies that the landlords' administrator told her she would have to pay \$1,800.00 to get the items back and then changed this figure to \$1,000.00.

The landlords administrator testifies that after the tenant had been evicted she asked the caretaker to remove the mirror and shelving. She testifies that she called the tenant and asked her to pay for the damages to the wall that the shelving had caused. However, the tenant became angry and did not want to talk to her. It took one and half days to take the shelving down and clean and repair the unit. Some of the shelves were damaged and the restoration company took some of the shelves away. The landlords administrator believes the remainder of the shelves and mirror have been stored by the landlord. The landlords' administrator estimates the value of the tenants' belongings to be approximately \$1,000.00.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The Residential Tenancy Regulations section 25 deals with a landlords obligation for any abandoned personal belongings. As the tenancy had ended the landlord was able to remove the tenants remaining belongings from the rental unit. However, section 25 of the regulations states:

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

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- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

The landlords administrator admits that the tenants belongings were worth more than \$500.00; therefore, I find the landlord did not comply with section 25 of the Act by keeping a written inventory of the tenants belongings and did not store all of them in a safe place and manner for a period of not less than 60 days following the date of removal.

The landlords' administrator has testified that she believes the landlord does have some of these items stored and I find the tenant is entitled to have these returned to her. In the event the tenants' belongings are not all in place she is at liberty to file another application for a Monetary Order for the value of any missing items.

The Residential Tenancy Regulation section 26 states:

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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

(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.

I find the landlord did attempt to get the tenant to pay a fee for her personal belongings. This fee was requested from her for the repair to the rental unit which was damaged by the holes left in the walls by the shelf fixings and therefore is a reasonable cost the landlord is entitled to be reimbursed for. The landlord requested two different amounts for this cost from the tenant. I find therefore, that the landlord must itemize the actual amount of costs incurred for the removal and storage of her personal belongings and give this account to the tenant to be reimbursed.

In the event the landlord had complied with section 25 of the regulations and had made an inventory of the tenants' belongings and stored them in a safe manner then the landlord would not have to return the tenants' belongings until the tenant satisfied any amounts owing to the landlord under section 26. However, the landlord may file an application for a Monetary Order for any amount owed to him by the tenant if the tenant does not reimburse the landlord for any reasonable costs when she collects her belongings.



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As the tenant has been successful with her application for the return of her personal property she is entitled to recover the filing fee paid for this application.

Conclusion

I HEREBY ORDER the landlord to return the tenants personal belongs at a prearranged date with the tenant. The tenant must collect her belongings from the landlord within 15 days of receiving this decision.

I HEREBY ORDER the landlord to bear the cost of the filing fee and Order the landlord to pay the tenant **\$50.00**.

The tenant is at liberty to make an application for a Monetary Order for the balance of any shelving not returned to her.

The landlord is at liberty to make an application for a Monetary Order for any reasonable costs for the removal and storage of the tenants' personal belongings that she does not reimburse the landlord for when she collects her belongings.

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: December 03, 2009.

Dispute Resolution Officer