

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for money owed for compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

Service of the initial hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 17, 2009. The Landlord testified that the registered mail delivery notice was posted to the Tenant's door, after being left in the main mailbox by the Mail Delivery Person. The registered mail package was unclaimed by the Tenant. An amended application displaying the correct spelling of the Tenant's name was filed on December 11, 2009 and posted to the Tenant's door by the Landlord. The Landlord argued that there was no use sending it registered mail if the notice of delivery was just going to be posted to the door and unclaimed.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The verbal month to month tenancy began on September 1, 2009 and ended sometime in October 2009 when the Tenant failed to return to the rental unit. The monthly rent was payable on the first of each month in the amount of \$666.49 and the Tenant was not required to pay a security deposit.

The Landlord testified that the Tenant paid his rent in cash and the Landlord did not provide the Tenant with receipts. The Landlord argued that he called the Tenant to arrange to meet with him to get the October 2009 rent payment and that it was not the Tenant who attended the meeting on October 9, 2009 but a different male who attended the meeting and delivered the Tenant's October 2009 rent payment to the Landlord.

The Landlord advised that when he was not able to reach the Tenant to make arrangements for the November 2009 rent to be paid the Landlord issued the 10 Day Notice to End Tenancy and posted it to the Tenant's door on November 4, 2009. The Landlord argued that no one has attended the rental unit since the 10 Day Notice was posted to the Tenant's door.

The Landlord confirmed that he misspelled the Tenant's name on the 10 Day Notice to End Tenancy as he had never known what the Tenant's name was prior to entering the rental unit on December 3, 2009.

The Landlord testified that he contacted the Residential Tenancy Branch and was told that if the Tenant failed to attend to the rental unit within one month of posting the notice on the door that the Landlord could consider the rental unit abandoned. The Landlord stated that he waited until December 3, 2009 before he entered the rental unit, at which time the Landlord saw a card with the Tenant's full name written on it. The Landlord stated that he has now moved the Tenant's possessions to a heated storage area.

The Landlord stated that once he was aware of the Tenant's proper name the Landlord filed an amended application for dispute resolution and posted a copy of the amended application on the Tenant's door on December 11, 2009.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant has been served with notice of the amended application for dispute resolution, for the purpose of requesting an Order of Possession under Section 55 of the Act, when the amended application was posted to the Tenant's door on December 11, 2009, in accordance with Section 89(2)(d). The amended application displayed the original name written on the 10 Day Notice to End Tenancy and the corrected name which displayed the Tenant's proper name. I accept the evidence before me that the Tenant has failed to attend the rental unit and has failed to pay the November 2009 rent when it was due, as required under section 26 of the Act, and has failed to pay the rent in response to the 10 Day Notice to End Tenancy or the application for dispute resolution which were both posted to the Tenant's door.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Monetary Claim – Section 89(1) provides that service of an application for dispute resolution when applying for a monetary order must be given either in person to the Tenant or sent to the Tenant via registered mail to the address where the tenant resides. In this case the amended application was posted to the Tenant's door which is a method of service for only an Order of Possession and not a monetary order. Based on the aforementioned I hereby dismiss the Landlord's request for a monetary order, with leave to reapply.

Given the method of service of the amended application, I decline to award the Landlord recovery of the filing fee.

During his testimony the Landlord provided information which confirms that the Landlord is not aware of his obligations under the Act. I cautioned the Landlord during the hearing of his requirements to understand his obligations as set forth under the Act and I have enclosed a copy of the Residential Tenancy Branch "A guide for Landlords and Tenants in British Columbia" with a copy of the Landlord's decision. I have also attached an appendix at the end of this decision which provides the Landlord with information pertaining to the removal and storage of the Tenant's property.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the Landlord's monetary claim, with 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: December 21, 2009.

Dispute Resolution Officer

APPENDIX

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

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,
- (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.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Tenant's claim for abandoned property

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.

Notice of disposition

27 (1) For the purposes of this section:

"financing statement" has the same meaning as in the *Personal
Property Security Act*;

"security interest" has the same meaning as in the *Personal
Property Security Act*;

"serial number" has the same meaning as in section 10 of the
Personal Property Security Regulation *[collateral described by
serial number]* made under the *Personal Property Security
Act*.

(2) Not less than 30 days before disposing of an item of personal
property referred to in section 24, the landlord must

(a) give notice of disposition to any person who

(i) has registered a financing statement in the
Personal Property Registry using the name of the
tenant or the serial number of the property, and

(ii) to the knowledge of the landlord, claims an
interest in the property, and

(b) publish the notice in a newspaper published in the
area in which the residential property is situated.

(3) The notice referred to in subsection (2) must contain

(a) the name of the tenant,

(b) a description of the property to be sold,

(c) the address of the residential property,

(d) the name and address of the landlord, and

(e) a statement that the landlord will dispose of the
property unless the person being notified takes

possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person.

(4) The notice referred to in subsection (2) must be given in accordance with section 72 of the *Personal Property Security Act*[*service of statements, notices and demands*].

Holder of a security interest

28 (1) When a notice referred to in section 27 (2) has been served on a person who holds a security interest, the tenant is deemed to be in default of the obligation secured.

(2) Before taking possession of the property, the person who holds a security interest must pay to the landlord moving and storage charges incurred by the landlord under this Part.

Disposal of personal property

29 (1) For the purposes of this section, administrator has the same meaning as in the *Unclaimed Property Act*.

(2) If a landlord has complied with section 25 [*landlord's obligations*], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,

(a) a person referred to in section 27 (2) [*person entitled to notice of disposition*] who has been given a notice as provided in that section has taken or demanded possession of the property,

(b) a person who holds a security interest in the property has taken or demanded possession of the property, or

(c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.

(3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to

(a) reimburse the landlord for his or her reasonable costs of

(i) removing, storing, advertising and disposing of 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.

(4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.

(5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.

(6) The purchaser of personal property disposed of in accordance with this Part acquires a marketable title free of all encumbrances on payment of the taxes owing in relation to the personal property or the sale.

(7) On the application of an interested person, a court may make an order

(a) prohibiting or postponing disposition of the property under this section on any conditions the court considers appropriate,

(b) determining the right of a person claiming an interest in or right to possession of the property or the right of the landlord to dispose of it, or

(c) that an action be brought or an issue be tried.

[am. B.C. Reg. 234/2006, s. 19.]

Landlord's duty of care

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the

property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.