



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes RPP, MNDC, O

Introduction

This matter dealt with an application by the Tenant for an Order requiring the Landlord to return his personal possessions, or in the alternative a Monetary Order for compensation for the value of those items.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of his personal possessions?

Background and Evidence

This tenancy started approximately 12 years ago and ended sometime in June of 2009. Rent was \$375.00 per month which included utilities. In April 2009, the Fire Department posted Notices in the rental property advising all occupants that the building had been condemned and requiring all occupants to vacate the property. At some point thereafter, the Landlord said the Fire Department disconnected the hydro and water to the rental property. The Tenant continued to reside in the rental unit until sometime in June 2009 when he said the Landlord hired a moving van and removed many of his belongings. The Tenant said that he was also denied access to the rental property.

The Landlord said the Tenant had been given Notices by the Municipality, the Fire Department and the Police Department to vacate but he refused to do so. The Landlord also said that she gave the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent but she did not apply for an Order of Possession. The Landlord claimed that she hired a van to remove the Tenant's belongings because she had received 3 fines of \$800.00 each because the Tenant and one other person would not leave. The Landlord said that some of the Tenant's belongings are still in the rental unit but he has failed or refused to retrieve them despite numerous requests by herself and the new owner that he do so.

The Tenant claimed that the Landlord had taken only his valuable items and refused to return them to him until he paid her for unpaid rent and storage fees. The Tenant admitted that he had spoken to the new owner of the rental property and claimed that the new owner agreed to store the belongings that were there until he could obtain them.

The Landlord claimed that she did not know what items of the Tenant's were in storage and denied that she would not let the Tenant have his belongings. However, the Landlord also argued that she should be entitled to "security for costs" before releasing the Tenant's belongings.

Analysis

Part 5 of the Regulations to the Act deals with rights of Landlords and Tenants where personal property has been abandoned by a Tenant. In particular, s. 26 of the Regulations states that a Landlord may, before returning a Tenant's abandoned property, require the Tenant to pay her reasonable costs of removing and storing the property and satisfy any other amount owed under the Act.

Section 24 of the Regulations to the Act sets out when a Tenant's property may be considered abandoned. I find that the Tenant was still residing in the rental unit when his property was removed and as a result, I conclude that the Landlord was not entitled to consider the Tenant's personal property as having been abandoned. Consequently, I find that the Landlord was not entitled to remove the Tenant's personal property without an Order of Possession or a Writ of Possession.

In circumstances such as these where there was a municipal order that the Tenant vacate the rental property, the Landlord is required under the Act to obtain an Order of Possession to have the Tenant and his belongings removed from the residential property. As a result, the Landlord cannot rely on s. 26 of the Regulations to the Act and accordingly, **I Order the Landlord to return the Tenant's personal possessions that she claims are currently located in a storage locker as follows:**

1. The Parties will meet at the storage locker on Saturday, December 5, 2009 at 11:30 a.m.;
2. The Landlord will provide the Tenant's advocate with the address of the storage locker no later than 11:00 am on December 3, 2009 by fax to (250) 741-5525;
3. The Parties will make a written inventory of the items in the storage locker and the Tenant will remove all of his items from the storage locker; and
4. The Tenant will make reasonable efforts to go to the rental property to retrieve any of his belongings left there but at a minimum must make an inventory of the items that are there.



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If all of the Tenant's belongings are not returned to him in the same condition that they were in when they were removed by the Landlord, the Tenant may re-apply for an order for compensation for their value. The Tenant may also re-apply for compensation for a rent abatement *if* the months for which he is claiming were months when he paid rent.

Conclusion

The Tenant's application is granted. 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 02, 2009.

Dispute Resolution Officer