

AMENDED DECISION

Dispute Codes MND, (MNDC), (MNR), MNSD, FF
RPP, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit, for unpaid rent, for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied for the return of his personal possessions or compensation for the value of them, for the return of his security deposit and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of his personal possessions or in the alternative compensation for the value of them and if so, how much?
3. Is the Tenant entitled to the return of his security deposit?

Background and Evidence

This tenancy started on August 1, 2004. Rent is \$1,500.00 per month payable in advance on the 1st day of each month.

The Landlord said that the Tenant paid only \$1,200.00 for June 2009 and did not pay rent for July and August 2009 and as a result on September 2, 2009 she and her spouse went to the rental unit and found a large amount of water in the drive way due to burst water main. The Landlord said she contacted the fire department because she was concerned about the risk of an electrical fire. The Landlord said the police also arrived and asked for access to the rental unit so her spouse crawled through the kitchen window and opened the locked door from the inside.

The Landlord claimed that while inside the rental unit the RCMP discovered grow op equipment and marijuana. The Tenant admitted that there was a small amount of growing equipment in a 4 by 6 foot storage room that he was storing for a friend but denied that there was any marijuana in the rental unit. The Tenant claimed that none of this equipment was confiscated by the RCMP and that he was never charged with any offence. However, the Landlord said the following day she received a letter from the City of Port Coquitlam advising her that the rental unit violated the Controlled Substance Nuisance Bylaw. The Landlord said she was advised that a "Do Not Occupy Notice" had been posted on the rental property by a City Inspector and that she was advised to

take a number of remedial steps before an occupancy certificate would be re-issued for the rental property.

The Landlord also claimed that on September 2, 2009, she contacted the Tenant by telephone and he said he would meet her at the rental property in 15 minutes but he failed to attend. The Tenant said the RCMP also contacted the Tenant a few hours later and he said he would come to the rental property but he never did. The Landlord said she waited for 10 days for the Tenant to remove his belongings before she changed the locks and started taking remedial measures but he didn't return.

The Tenant claimed that he did pay rent for June, July and August 2009 and said that he received a receipt for those cash payments from the Landlord. The Tenant also claimed however, that when he returned to the rental unit sometime between September 8 and 10, 2009, the locks had been changed by the Landlord. The Tenant said he contacted the Landlord and left a voice mail message for her but she did not call him back. The Tenant said he called the Landlord a number of other times but only got her voice mail so he gave up trying. The Tenant claimed that all of his possessions including his rent receipts were in the rental unit.

The Landlord argued that the Tenant had abandoned the rental unit and therefore she was entitled to hold onto the Tenant's belongings until he paid her compensation that she has claimed in these proceedings. The Tenant denied that he abandoned the rental unit and claimed that he was living in the rental unit up to and including September 1, 2009.

Analysis

Section 26 of the Act says that if a tenant claims **abandoned** personal property at any time before it is disposed of, the Landlord may require the Tenant to satisfy any amounts owed by the Tenant to the Landlord under the Act or tenancy agreement.

Section 24(1) of the Regulations to the Act sets out the circumstances under which a Landlord may consider that a Tenant has abandoned personal property. I find that none of the circumstances listed under s. 24(1) apply in this case. In particular, I find that there is no evidence that as of September 12, 2009, the tenancy had ended. I further find that there is no evidence that the Tenant had not ordinarily occupied the rental unit for a continuous period of one month as of September 12, 2009. Consequently, I find that the Tenant did not abandon his personal possessions but instead was prevented from having access to the rental unit to get them when the Landlord changed the locks on or about September 12, 2009.

As a result, I find that the Landlord is not entitled to retain the Tenant's personal property to satisfy any amounts that might be owed to her arising out of her claim in this matter and I order her to return those possessions to the Tenant. The Parties agreed

that the Tenant would retrieve his personal possessions at the rental property on January 30, 2010 at a mutually agreeable time and I order the Landlord to comply.

I further Order both Parties to make an inventory of the items returned to the Tenant and to provide a copy of those lists to the Residential Tenancy Branch prior to **March 3, 2010 at 1:30 p.m.** when the balance of the Parties' applications will be reconvened for hearing.

Conclusion

The Tenant's application for the return of his personal property is granted. The balance of the Parties' applications are adjourned to March 3, 2010 for hearing.

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 19, 2010.

Dispute Resolution Officer

NOTE: This amended decision corrects and replaces the Decision I issued on January 19, 2010 which had a clerical error.