



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPT, RPP, FF

Introduction

This matter dealt with an application by the Tenant for the return of the Tenant's personal property, an Order of Possession of the rental unit and a request for the recovery of the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on October 13, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to his personal property and how may it be returned to him?
2. Is the Tenant entitled to an Order of Possession of the rental unit?

Background and Evidence

The Landlord said this tenancy started in April 16, 2010 as a month to month tenancy. The Tenant said the tenancy started on May 1, 2010 as a month to month tenancy. Rent was \$650.00 per month payable in advance of the 1st day of each month. The Landlord says the Tenant paid a security deposit of \$325.00 on April 16, 2010. The Tenant says he paid a rent deposit of \$650.00 on May 10, 2010.

The Tenant said that he told the Landlord on September 29, 2010 that he was moving out on October 31, 2010. He continued to say the Landlord said that he had to pay \$650.00 to the Landlord for rent before he would let the Tenant into the rental unit. The Tenant said the Landlord said he would change the locks on October 1, 2010. The Tenant said he was visiting a friend from September 29 to October 1, 2010, when he was told this.

The Tenant said that the Landlord lock him out of his rental unit on October 1, 2010 for not paying the rent. The Landlord's sister said the Landlord posted Notices to End Tenancy for unpaid rent on September 16, 2010 and October 2, 2010 on the door of the Tenant's unit. The Tenant said he saw not Notices to End Tenancy and he paid all the rent up to and including September, 2010 if his rent deposit is applied to the rent. He

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said the rent was paid by cash and the Landlord would not give him a receipt when he paid him the rent. The Landlord's sister said she had no evidence that the rent was paid or not.

The Tenant continued to say that he phoned the Landlord on October 1, 2010 and the Landlord said he had changed the locks and that the Tenant had to pay him \$650.00 before he could get his belongings back. The Tenant said he then went to the unit with the police and the Landlord said the same thing and would not let him into the rental unit.

The Tenant said that all his belonging are in the unit including his passport, his medication, his money and other personal items. The Tenant said he applied for dispute resolution to gain access to the unit to get his belonging back.

The Landlord's sister said she was acting for the Landlord as he was out of the country, but she didn't know much about the tenancy. She read from a statement from the Landlord which said the Tenant had abandon the unit and that the tenant had unpaid rent for September and October, 2010 in the amount of \$1,400.00 and there were some other damages. She said the Landlord has not applied for dispute resolution.

Analysis

Section 31 says a Landlord must not change the locks or other means that give access to the residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

The Landlord changed the locks and did not provide means to the Tenant to access the residential property. I find that the Landlord has not complied with the Act.

Section 65 (e) says that if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make an order that personal property seized or received by the landlord contrary to this Act or a tenancy agreement must be returned.

Section 54 says a tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution and the director may grant an order of possession to the tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

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I find for the Tenant's application and grant an Order of Possession of the rental unit to the Tenant to recover his personal property. The order will read that the Tenant has possession of the rental unit for 48 hours during the time period of November 15, 2010, to November 30, 2010. The Tenant must serve a copy of the Order on the Landlord, 2 days prior to taking possession of the rental unit and the service of the Order of Possession must be in one of the ways specified in the Act.

As the Tenant has been successful in this matter, he is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 72 of the Act to pay the Tenant \$50.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Landlord has been issued to the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Landlord is ordered to pay the Tenant the filing fee for this proceeding of \$50.00.

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*.
