



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord return the tenant's personal property.

The hearing was conducted via teleconference and was attended by the tenant's agent only, the landlord did not attend.

The agent testified the landlord was served personally with the notice of hearing documents on September 1, 2011 and that this service was witnessed by a third party. I accept the landlord was sufficiently served with notice of this hearing and the matters being heard.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to compel the landlord to return the tenant's possessions and to a monetary order to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant's agent testified that the landlord evicted the tenant and the tenant was forced to vacate the rental unit on August 31, 2011. When the tenant's person who was suppose to the move the tenant's belongings did not show up the landlord changed the locks and refused the tenant access.

The agent testified that the tenant was not made aware whether or not the landlord had obtained an order of possession from the Residential Tenancy Branch and/or a Writ of Possession from the Supreme Court of British Columbia.

The agent testified that the day after the landlord was served with notice of this hearing the tenant received word from a friend that all of the tenant's belongings were on the yard of the residential property. The tenant found some items there but some bags of belongings had been filled with garbage such as milk containers being emptied into the bags and electronics were left in the rain.

The agent further stated that there are still belongings left behind that the landlord has under lock and key in the carport.

Analysis

Section 44 of the *Act* states a tenancy ends if, among other things, a landlord or tenant has given a notice to end that is compliant with the *Act* or if the tenant vacates the rental unit.

In the absence of any evidence or testimony from the landlord I find the landlord has failed to provide a notice to end the tenancy with notice that is compliant with the *Act*. As a result, I find the landlord had no right to restrict the tenant's access to the rental unit.

Further, as the tenant has now vacated the rental unit, forcibly, I find the landlord has no right to retain any of the tenant's possessions and must return them all to the tenant.

Conclusion

I order the landlord to provide the tenant and/or his agent access to the residential property and/or any storage facility that contains the tenant's possessions. I order that the landlord do so at a mutually agreed upon time and no later than October 21, 2011.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 29, 2011.

Residential Tenancy Branch