



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNDC, RPP, FF and O

Introduction

This application was brought by the tenant on November 3, 2011 seeking an Order for return of personal property, a monetary award of \$25,000 in compensation for a breach of the legislation or rental agreement and recovery of the filing fee for this proceeding.

Preliminary Matters

The landlord's legal counsel submitted a very large amount of evidence in support of claims in damages against the tenant, but had not yet made application for dispute resolution. As the tenant's application is inextricably interwoven with that of the tenant, because of the complexity of the dispute, and because there is one recent court ruling in favour of a third party with respect to property in dispute, I found it necessary to adjourn the present hearing.

However, to the extent that the application deals with a claim for return of personal property, this Interim Decision will address the questions surrounding disposition of that property.

In order to provide some context, the basic facts pertaining to this dispute are as follows:

The tenancy began on August 1, 2010 and ended pursuant to an Order of Possession for unpaid rent issued on June 30, 2011. Rent was \$2545 per month

The tenant was arrested in the rental building on May 25, 2011 after attempting to flee police and was in custody until July 15, 2011 at which time he was convicted of theft over \$5000 and sentenced to a 12 month conditional sentence to be served in the community.

The landlord was granted the Order of Possession on June 30, 2011 to take effect two days from service.

On the belief that the tenant was unlikely to return to the rental unit, the landlord relied on regulation 24 under the *Act* and considered that “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.”

On June 24, 2011, a solicitor acting for the tenant wrote to the landlord and requested delivery of an itemized list of property items. *Regulation 26* states that, before returning the property to the tenant, the landlord may require the tenant to reimburse the landlord for the reasonable costs of removal and storage and the cost of a search for holders of security interests in the property. If the tenant does not pay these amounts, the landlord remains free to dispose of the property. I have no evidence that the tenant paid the amounts in question.

If he did not, and in view of the issuance of the Order of Possession in favour of the landlord on June 30, 2011, I find that the landlord acted lawfully in treating the goods as abandoned.

Section 27 of the *regulations* requires that 30 days before disposing of the property in question, the landlord publish notice in an area newspaper of the intention to do so. The landlord has submitted a copy of such notice published in the Vancouver Sun on August 27, 2011. As a matter of note, the landlord is aware of the judgement granted to a furniture store that appears to have some overlap with the tenant's list of property.

I find that I have insufficient evidence to order that the landlord return the property to the tenant given the outstanding questions as to whether the tenant offered payment for moving and storage and other monies owed and consideration of the apparent third party interest.

I would refer the landlord and her legal counsel to once again review the requirements of part 5 of the regulations pertaining to abandonment before proceeding with disposal.

Conclusion

This hearing will reconvene at a time and date set out in the attached Notice of Hearing.

In the interim, if the landlord wishes to make application for damages, I would ask that he request that application to be treated as a cross application with the present file.

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: November 18, 2011.

Residential Tenancy Branch