



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB MNSD MNDC O FF

Preliminary Issues

The Landlord affirmed that the Tenant was served copies of the Notice of Dispute Resolution by registered mail on October 10, 2012. Canada Post receipts were provided in the Landlord's evidence. The Landlord advised that he had checked the Canada Post website and determined that the registered mail package was being returned to him as it was unclaimed by the Tenant.

The Landlord advised that his building manager saw the Tenant move some of his items out of the rental unit on October 1, 2012, and he has not been seen at the building since. The Landlord noted that the Tenant has not returned the keys and he has left most of his possessions in the unit. Rent has not been paid for October or November 2012, therefore the Landlord believes the Tenant has ended the tenancy in accordance with his notice to end and has abandoned possessions inside the unit. The Landlord pointed to his evidence which included a copy of the notice to end tenancy provided by the Tenant. He said the building manager and him posted a copy of the Notice and the application to the Tenant's door on October 10, 2012.

Section 89 (1) of the *Residential Tenancy Act*, (the Act) stipulates that an application for dispute resolution for an Order of Possession and a Monetary Order, if served by registered mail, must be served to the address where the tenant resides.

Section 89 (2) of the Act, stipulates that if the application is for only the Order of Possession then service can be conducted by attaching a copy of the application to the tenant's door.

Based on the foregoing, I find the Tenant was sufficiently served notice of this proceeding for purposes of an application for an Order of Possession and not a Monetary Order. Accordingly, I dismissed the application for a Monetary Order, with leave to reapply, and I proceeded with the request for an Order of Possession, in the Tenant's absence.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain

an Order of Possession for breach of an agreement and to recover the cost of the filing fee from the Tenant for this application.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the Tenant's notice to end tenancy, a second copy of the Tenant's notice to end tenancy which included a witness statement, Canada Post receipts, and the tenancy agreement.

The Landlord confirmed the Tenant entered into a month to month tenancy that began on July 15, 2012. Rent was payable on the first of each month in the amount of \$720.00 and on July 8, 2012 the Tenant paid \$360.00 as the security deposit.

The Landlord advised that his building manager received the Tenant's notice to end his tenancy effective October 1, 2012. The building manager advised the Landlord that he saw the Tenant move a few of his possessions out of the unit on October 1, 2012 and he has not been back to the rental unit since. They posted notice and application on the Tenant's door on October 10, 2012. They have since entered the unit and found that the Tenant left behind a lot of possessions and food. The Landlord said the papers are still taped to the door and they also put tape on the door which has not been disturbed so they have proof that no one has entered the unit since October 10, 2012.

The Landlord is seeking an immediate Order of Possession as no rent has been paid for October or November and he would like to clean out the unit and get it re-rented as soon as possible.

Analysis

I have carefully considered the aforementioned, and on a balance of probabilities I find this tenancy to have ended October 1, 2012, in accordance with the Tenant's notice to end tenancy. I further find the Tenant to have abandoned the property he left inside the unit. Accordingly, I award the Landlord an Order of Possession effective immediately.

I have copied the Regulation Part 5, Abandonment of Personal Property, to the end of this decision for the Landlord's information on how to manage the Tenant's property that was left inside the rental unit.

Conclusion

The Landlord has been granted an Order of Possession, effective immediately. The Landlord is required to serve the Order by posting it to the Tenant's door.

The Landlord has been successful with his application; therefore I award the Landlord recovery of the \$50.00 filing fee which may be withheld from the Tenant's security deposit.

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 14, 2012.

Residential Tenancy Branch

Part 5 — Abandonment of Personal Property

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
- (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
- (b) 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.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Tenant's claim for abandoned property

26 (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to

(a) reimburse the landlord for his or her reasonable costs of

(i) removing and storing the property, and

(ii) a search required to comply with section 27 [*notice of disposition*], and

(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

Notice of disposition

27 (1) For the purposes of this section:

"financing statement" has the same meaning as in the *Personal Property Security Act*,

"security interest" has the same meaning as in the *Personal Property Security Act*,

"serial number" has the same meaning as in section 10 of the *Personal Property Security Regulation* [*collateral described by serial number*] made under the *Personal Property Security Act*.

(2) Not less than 30 days before disposing of an item of personal property referred to in section 24, the landlord must

(a) give notice of disposition to any person who

(i) has registered a financing statement in the Personal Property Registry using the name of the tenant or the serial number of the property, and

(ii) to the knowledge of the landlord, claims an interest in the property, and

(b) publish the notice in a newspaper published in the area in which the residential property is situated.

(3) The notice referred to in subsection (2) must contain

(a) the name of the tenant,

(b) a description of the property to be sold,

(c) the address of the residential property,

(d) the name and address of the landlord, and

(e) a statement that the landlord will dispose of the property unless the person being notified takes possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person.

(4) The notice referred to in subsection (2) must be given in accordance with section 72 of the *Personal Property Security Act*[*service of statements, notices and demands*].

Holder of a security interest

28 (1) When a notice referred to in section 27 (2) has been served on a person who holds a security interest, the tenant is deemed to be in default of the obligation secured.

(2) Before taking possession of the property, the person who holds a security interest must pay to the landlord moving and storage charges incurred by the landlord under this Part.

Disposal of personal property

29 (1) For the purposes of this section, "**administrator**" has the same meaning as in the *Unclaimed Property Act*.

(2) If a landlord has complied with section 25 [*landlord's obligations*], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,

- (a) a person referred to in section 27 (2) [*person entitled to notice of disposition*] who has been given a notice as provided in that section has taken or demanded possession of the property,
 - (b) a person who holds a security interest in the property has taken or demanded possession of the property, or
 - (c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.
- (3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to
- (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing, storing, advertising and disposing of the property, and
 - (ii) a search required to comply with section 27 [*notice of disposition*], and
 - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.
- (5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.
- (6) The purchaser of personal property disposed of in accordance with this Part acquires a marketable title free of all encumbrances on payment of the taxes owing in relation to the personal property or the sale.
- (7) On the application of an interested person, a court may make an order
- (a) prohibiting or postponing disposition of the property under this section on any conditions the court considers appropriate,
 - (b) determining the right of a person claiming an interest in or right to possession of the property or the right of the landlord to dispose of it, or
 - (c) that an action be brought or an issue be tried.

Landlord's duty of care

- 30** When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.