



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, RPP

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for the cost of emergency repairs, for the return of the security deposit and for an Order for the landlord to return the tenants' personal property. At the outset of the hearing the tenants withdrew their application for a Monetary Order for the cost of emergency repairs and for the return of the security deposit.

The hearing was originally scheduled to take place and the tenants and the landlord's business partner attended the hearing. However, the landlord's business partner testified that the tenants had served the landlord while the landlord was overseas and the landlord has not returned to receive notice of this hearing and has no knowledge of the hearing. The landlord's business partner has no knowledge of the events and does not have the landlord's authority to attend the hearing on the landlord's behalf. The parties agreed to have the hearing adjourned and the reconvened hearing took place today. The tenants and landlord attended the conference call hearing. The tenants' advocate and the landlord's agent/ business partner also attended the hearing. The parties gave sworn testimony and were given the opportunity to cross-examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to an Order for the landlord to return the tenants personal property?

Background and Evidence

The parties agree that this tenancy started on February 01, 2012. Rent for this unit was \$890.00 per month and was due on the 1st day of each month. The tenants paid a security deposit of \$445.00 which the tenants subsequently agreed in writing the landlord could keep.

The tenants testify that there was a home invasion at the property and one of the tenants was held hostage. The tenants subsequently did not return to the property to remove their personal property and the landlord stored this for the tenants.

The tenant PS testifies that they seek to have these belongings returned to them but state they cannot afford to pay the landlord the storage fees.

The landlord testifies that the tenants' belongings were stored in accordance with the Residential Tenancy Regulations. The tenants did not remove their belongings at the end of the tenancy and the landlord stored them from July 11, 2012 to September 24, 2012. The landlord has provided evidence of the storage costs and an inventory of the tenants' belongings in evidence.

The landlord testifies that the tenants' belongings were stored for 60 days in a storage locker and on August 20, 2012 the landlord informed the tenant that the 60 days was up. The landlord testifies that a Notice was placed in the local paper informing the tenants that in accordance with the provisions set out in the *Residential Tenancy Act* all belongings that were left behind and are currently in stored will be sold or discarded on

September 24, 012 and the proceedings will be put towards the outstanding debt unless arrangements are made to pay the debt in the amount of \$818.46 to the landlord.

The landlord testifies that the storage company called the landlord to inform the landlord that someone was making inquiries about the contents of the storage locker. The landlord testifies that as the storage was in the landlord's name the storage company would not give out any details. The landlord testifies that she found out that the landlord must continue to store the tenants' belongings for another 30 days while the notice was in the newspaper. The landlord then removed the tenants' belongings from the storage company and stored the items at the landlord's business to reduce costs. After this time had lapsed the landlord attempted to sell some of the tenants' belongings as was her entitlement but was unsuccessful so some of the items with the exception of the baby items were disposed of. The landlord testifies that the tenants may claim the remainder of their belongings when the storage costs are settled.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to Part 5, s.23 (1) of the Residential Tenancy Regulations concerning abandonment of personal property. This section provides for the landlord's obligations to any personal property left at the rental unit and states that 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).

If a tenant makes a claim for their abandoned property s. 26(1) of the regulations states:

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.

Part Five of the regulations goes on to state under s. 27(2) that:

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.

I am therefore satisfied that the landlord has complied with part 5 of the Regulations concerning the abandonment of personal property. I therefore find the landlord is entitled to dispose of the tenants personal property after September 24, 2012 as it was unclaimed by the tenants.

The landlord agrees the tenants may collect the remainder of their personal property that was not disposed of namely baby items. However the landlord states these items will only be released to the tenants on receipt of payment for the landlord's costs to remove and store the items.

Conclusion

Due to the above it is my decision that the tenants application is dismissed without leave to reapply.

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: February 15, 2013

Residential Tenancy Branch

