



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, CNR, AAT, LRE

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make emergency repairs and repairs, an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), an order requiring the landlord to allow access to the rental unit, and an order suspending or setting conditions on the landlord's right to enter the rental unit.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receiving the application and the tenant's evidence and further confirmed that she had not filed any documentary evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice, an order allowing her access to the rental unit, and other orders for the landlord?

Background and Evidence

The tenant submitted that this tenancy started on May 1, 2013, that monthly rent is \$675 and that she paid a security deposit of \$337.50. Both parties agreed that the landlord had not prepared a written tenancy agreement.

The landlord supplied evidence that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") by posting it on the door to the rental unit on May 24, 2013, listing unpaid rent of \$275.

In response to my question the landlord said that she understood that the tenant did not receive the Notice on May 24, as, according to the landlord, the tenant "left with the RCMP" the night before the Notice was posted and did not return.

The landlord said that she changed the locks to the rental unit on May 24, 2013, and has never given a key to the tenant. The landlord submitted that she believed the tenant had abandoned the rental unit.

The tenant confirmed that she no longer was seeking cancellation of the Notice as she was looking for a new residence; however the tenant said that she would like access to the rental unit to remove her personal property. The tenant said that she would not have the funds to rent a self-serving rental truck until the end of this month.

The landlord said that the tenant failed to pay rent for May and that she has not received rent for June; however the landlord agreed that the tenant's personal property was still in the rental unit and that the tenant should be charged for storage.

The landlord further submitted that the tenant has had access as she, the landlord, seldom locks the door to the rental unit.

The landlord requested an order of possession for the rental unit.

Analysis

As the tenant has confirmed that she no longer sought to cancel the 10 Day Notice, I dismiss that portion of her application, without leave to reapply. As I have dismissed the tenant's application dealing with such request to cancel, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession for the rental unit. I therefore grant the landlord an order of possession for the rental unit, with an effective end of tenancy date of 1:00 p.m., June 30, 2013.

As the tenancy is ending, I therefore decline to consider the tenant's request for an order requiring the landlord to make emergency repairs and repairs and an order suspending or setting conditions on the landlord's right to enter the rental unit and dismiss those requests, without leave to reapply.

The remaining issue before me therefore was the tenant's request for an order requiring the landlord to allow access to the rental unit and as such, I therefore considered the landlord's contention that she deemed the rental unit abandoned, subsequently changing the locks to the rental unit

Regulation 24 of the *Residential Tenancy Act* provides the following:

- 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.

In the circumstances before me the landlord acknowledged that she knew that the tenant had not received the 10 Day Notice. Additionally, in the hearing, both parties confirmed that they had discussed the payment of the remaining rent owed for May 2013, with a differing version of events regarding that conversation.

I therefore find the actions of the landlord were contrary to Regulation 24 which required that the rental unit and personal property can only be considered abandoned for a continuous period of one month and some form of communication that the tenant does not intend to return. I am satisfied that these conditions were not met. I accept the tenant's evidence that she intended to retain possession of the rental unit until she could remove her personal property.

I find that the landlord took possession of the rental unit and the tenant's possessions contrary to the *Act* and regulations. As a result I order that the landlord allow the tenant access to the rental unit to regain her personal property and possessions until 1:00 p.m., June 30, 2013, the effective date and time of the order of possession for the rental unit that I have granted to the landlord.

The tenant is advised that should she fail to remove her personal property and possessions by 1:00 p.m., June 30, 2013, the landlord is at liberty to deal with the personal property in a manner consistent with sections 24 and 25 of the Regulations.

Conclusion

The tenant's request for an order cancelling the 10 Day Notice, an order requiring the landlord to make emergency repairs and repairs, and an order suspending or setting conditions on the landlord's right to enter the rental unit are dismissed as this tenancy is ending.

The tenant's request for an order requiring the landlord to allow the tenant access to the rental unit is granted and the landlord is ordered to allow the tenant access to the rental unit until 1:00 p.m., June 30, 2013.

The landlord is granted an order of possession for the rental unit, effective at 1:00 p.m., June 30, 2013.

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: June 20, 2013

Residential Tenancy Branch