



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westsea Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, RPP

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order of possession for the rental unit and an order requiring the landlord to return the tenant's personal possessions.

The listed parties attended the teleconference hearing and the matter of a settlement of the issues was discussed. After a lengthy discussion did not result in a settlement, the hearing proceeded on the tenant's application, with each party being given the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

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

Preliminary matter-The tenant's application listed the landlord's agents named above, TVB and PH as the landlord; the landlord requested that the corporate name be used as the listed landlord and as a result, I have changed the style of cause to reflect the landlord's corporate name.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to return his personal property and for an order of possession for the rental unit in order that the tenant is allowed access to retrieve his personal property?

Background and Evidence

The undisputed evidence shows that this tenancy began on May 1, 1998, and ended on May 15, 2014, when a fire in the multi-level apartment building caused many tenants to be evacuated, including the tenant here.

On May 22, 2014, the landlord deemed that the tenancy was frustrated on May 15, 2014, as noted in their letter to the tenant on that date. The letter was submitted into evidence by the landlord. This letter also mentions that the tenant would be advised as to whether or not his belongings were safe to take back as soon as possible.

In support of his application, the tenant submitted that he was displaced on May 15, 2014, and attempted to return to his rental unit on May 18 in order to retrieve his personal belongings and was prevented from so doing by the landlord and construction company personnel.

The tenant submitted that on June 2, 2014, he again attempt to return to the rental unit to retrieve his personal property, and was not allowed to do so. The tenant was given emergency medication, limited clothing, and eyeglasses from the rental unit, on the condition that he sign a Mutual Agreement to end the tenancy, according to the tenant.

The tenant submitted that he again attempted to access the rental unit on June 11, and was denied and to date, has not been allowed access to the rental unit or the majority of his personal property since May 15, 2014.

The tenant's legal advocate submitted that he was advised that the tenant should make an application seeking an order of possession for the rental unit, for access to the tenant's personal property.

The tenant's relevant documentary evidence included, but was not limited to, written submissions and a witness statement.

Landlord's response-

The landlord submitted that the fire and related damage caused a large block of the residential property to become uninhabitable as deemed by an environmental company, due to air quality issues caused by asbestos, mold, water and smoke damage.

The landlord submitted that the environmental company advised them that it would not be safe for the tenant to return to the rental unit to collect his personal property without wearing personal protective equipment and having been trained in risks of hazardous material.

The landlord submitted that the tenant should provide his own protective gear and that had the tenant purchased tenant insurance, that insurance company would provide the cost of reclamation.

The landlord submitted that the tenant was offered the opportunity to have his personal property returned, but failed to take advantage of the opportunity to do so. In explanation, the landlord submitted that if the tenant would provide a listing of the items he wanted, and if they could be decontaminated by their construction company, the items would be returned.

The landlord submitted that the tenant would have to bear the costs of decontaminating the items of personal property requiring the same.

The landlord argued that if the tenant was allowed access to the rental unit, the moment he carries out contaminated items, the entire residential property is put at risk.

In response to my question, the landlord did confirm that the hallways have been declared safe.

The landlord's additional relevant documentary evidence included, but was not limited to, the environmental report, a contractor's report, and the Mutual Agreement to End the Tenancy.

Tenant's rebuttal-

The tenant submitted that he was willing to assume any health risk of retrieving his personal property, as he has been exposed to mold and asbestos in the rental unit for 15 years.

The tenant submitted that he did not trust the landlord to return all his items and that he wanted access to go through his personal property.

Analysis

It is clear that this tenancy ended on May 15, 2014, and I find the evidence supports that the landlord has denied the tenant access to the rental unit or most of his personal property since that date. Therefore I find the landlord has retained the tenant's personal property after this tenancy has ended, in violation of the Residential Tenancy Regulations, which provides:

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).

I find that the landlord has failed provide the tenant with a listing of the inventory of the personal property and I find that it is not upon the tenant to provide a listing of the landlord for the landlord to then make a determination of any personal property which can be decontaminated and returned to the tenant.

Pursuant to section 65 of the Act, I therefore order the landlord to make the tenant's personal property in its entirety available for the tenant to retrieve by the end of the business day, July 12, 2014. The location chosen for the retrieval must be one reasonably convenient to the tenant, and either at the location of the rental unit or close to the residential property.

To give effect to this order, I make the following ancillary orders:

- a) the tenant must inform the landlord **in writing**, at least one day prior, of the date and time that he wishes to retrieve his possessions;
- b) the landlord must provide the tenant with a **complete and comprehensive** inventory list of the tenant's possessions, and the landlord and the tenant must sign the inventory list to indicate what items the tenant has retrieved. The landlord must then provide the tenant with a copy of the inventory list; and
- c) any items that the tenant does not retrieve on this date will be considered abandoned and may be disposed of by the landlord; however, the tenant is to be provided adequate time to inspect, assess and remove his personal property.

Once the tenant is given access to his property he is responsible for timely removal of those items. If the tenant is not given access to his property by July 12, 2014, at the end of the business day, the tenant is at liberty to submit an Application claiming compensation under the Act.

If the tenant fails to retrieve his belongings the landlord must treat those belongings as required by the Residential Tenancy Regulation.

As to the tenant's request for an order of possession for the rental unit, I find that he is not entitled to the same as the tenancy is over, and I have granted his application

seeking a return of his personal property. Therefore this portion of his application is dismissed.

Conclusion

The landlord has been ordered to make the tenant's personal property in its entirety available for the tenant to retrieve by the end of the business day, July 12, 2014.

No later than July 12, 2014; the tenant must have been given the opportunity to retrieve all of his belongings. If the landlord fails to provide the tenant access to his belongings by July 12, 2014, the tenant is at liberty to submit an Application requesting compensation.

Any items not retrieved by the tenant must be considered by the landlord, as provided by the Residential Tenancy Regulation. Until the tenant either retrieves his property, or the requirements of the Regulation are met by the landlord, the landlord remains responsible for the tenant's personal property as determined by the legislation.

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: July 3, 2014

Residential Tenancy Branch

