



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, OLC, RPP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant: to obtain an Order of Possession for the rental suite; for the Landlord to comply with the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and for the Landlord to return the Tenant’s personal property.

The Tenant and Landlord appeared for the hearing and both parties provided affirmed testimony during the hearing; however, neither party provided written evidence in advance of the hearing. No issues were raised in relation to the service of the Tenant’s Application and Notice of Hearing documents to the Landlord.

The hearing process was explained and the participants were asked if they had any questions. Both parties were given the opportunity to cross-examine the other party and make submissions to me.

Issue(s) to be Decided

- Is the Tenant entitled to an Order of Possession of the rental suite?
- Has the Tenant established that the Landlord has the Tenant’s personal property?
- Has the Tenant established that the Landlord breached the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant and Landlord agreed that this tenancy started in June, 2013 on a month to month basis. The Tenant testified that his monthly share of the rent was payable to the Landlord in the amount of \$375.00 on the first day of each month.

The Tenant testified that there was a written tenancy agreement in place but the Landlord denied any agreement citing a decision made in a previous hearing conducted on May 1, 2014 where the arbitrator determined that this was an oral tenancy agreement valid under the Act.

The Tenant testified that on May 31, 2014, he left his rental unit and when he returned later that night he discovered that the Landlord had changed the locks to his rental suite. The Tenant testified that he called the police who attended the rental suite and then spoke to the Landlord.

The Tenant testified that the police spoke to him after they had spoken with the Landlord, and alleges that the police told him that the Landlord had explained to them that the Tenant had left three weeks ago and had abandoned the rental suite; the police explained that he should not return back to the rental suite.

The Tenant submitted that the Landlord lied to the police and this was the Landlord's retaliation in response to the Tenant's request for repairs. The Tenant submitted that the Landlord has all of his personal property at the rental suite worth thousands of dollars which he will not return back to him. The Tenant submitted that he is residing in his car and is seeking an Order of Possession for the rental suite and for the Landlord to comply with the Act in giving him back his personal belongings.

The Landlord testified that he had served the Tenant the Order of Possession which he had been issued by the arbitrator after the hearing on May 1, 2014 after which the Tenant filed for a review of the decision. The Landlord testified that the Tenant's review application was dismissed and as a result, he gave the Tenant three weeks to leave the rental suite before he would enforce the Order of Possession through the courts.

The Landlord testified that the Tenant then slowly moved out his belongings bit by bit over the next three weeks until the unit was eventually emptied on May 29, 2014 after which the Tenant abandoned the rental suite leaving the front doors wide open. As a result, the Landlord changed the locks and secured the rental unit pursuant to section 44(1) (d) of the Act.

The Landlord testified that when the police spoke to him after they had been called by the Tenant, he showed the police the rental suite indicating that it was abandoned. The Landlord also showed the police the Order of Possession documents which he had obtained from the previous hearing and submitted that this was the reason why the police had asked the Tenant to not return to the rental unit.

When the Landlord was questioned about what happened with the Tenant's personal property, the Landlord submitted that the Tenant took all of his belongings with him and this was the reason why he determined that the rental unit had been abandoned by the Tenant.

When I explained to the Tenant during the hearing about the burden of proof (also detailed below) a party needs to meet when making a claim, the Tenant became frustrated and disruptive in the hearing; the Tenant stated that I was not believing his version of the events and that he was unable to get any evidence to verify his account because the Landlord had all his personal belongings. When I tried to further explain the burden of proof to the Tenant he continued to interrupt the proceedings until I explained to the Tenant that I had noted his submissions (as above) and would be making a written decision in this matter.

The Tenant questioned me as to what evidence he was required to provide and how would he be able to get this evidence. I explained to the Tenant that my role and jurisdiction is limited to hearing the evidence presented by both parties and I was not able to advise on what evidence would be satisfactory for a party to prove their claim and the methods they would go about in collecting such evidence.

Analysis

When a party makes an Application against the other, the applicant bears the burden of proof on the balance of probabilities, to prove their claim. If a party's evidence is disputed by the other party, then the party making the claim must be able to corroborate or support their evidence by other means that would give merit to their claim.

When the only evidence a party relies upon consists of oral testimony provided during a hearing and this is disputed by the opposing party with an equally probable version of the events, this results in one party's word against the others; without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. As explained to the Tenant during the hearing, this does not necessarily mean that one party's word is believed over the other's, but simply that in the interest of natural and fair justice, a party's **disputed and unsubstantiated testimony alone** is not sufficient in this case to support a decision in favour of the applicant.

The Tenant submits that he wants an Order of Possession for the rental suite on the basis that the Landlord locked him out. However, I find that the arbitrator for the previous hearing ordered the tenancy ended by issuing the Landlord with an Order of Possession which was served to the Tenant. The Order of Possession would have

enabled the Landlord to evict the Tenant through the appropriate means and there is not sufficient evidence before me to show that the Tenant was illegally evicted. As a result, I find that the Tenant is not entitled to an Order of Possession for the rental suite.

In the same respect, the Tenant failed to provide sufficient evidence to show that the Landlord had or was in control of the Tenant's personal property and had failed to return it to him at the end of the tenancy. The Landlord submitted that the Tenant had removed all of his belongings himself and that the Tenant was using this hearing to get back into the rental suite for which he had no entitlement to be there.

The Tenant relies on his claim that the Landlord told the police that the Tenant was not living in the rental suite for three weeks and that was the reason why he convinced the police to take no action. However, the Landlord denied the Tenant's version and testified that he told police he had given the Tenant three weeks to leave the tenancy and that the Tenant had been moving his items out of the rental suite slowly during this time period.

The Tenant failed to provide any evidence of the items that were missing and supporting evidence with regards to its value. In this case, I find that the Tenant's allegation that the Landlord has his personal belongings and the Landlord's submission that he does not, again results in one party's word against the others and therefore the Tenant has failed to prove this portion of his claim.

Based on the foregoing, I also find that the Tenant has failed to establish sufficient evidence to show that the Landlord breached the Act, regulation or tenancy agreement.

Conclusion

For the reasons above, I dismiss the Tenant's Application **without** leave to re-apply.

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 10, 2014

Residential Tenancy Branch

