



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, RPP, O

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act seeking an order of possession or access to the rental unit for the purpose of retrieving her possessions and an order requiring the landlord to return the tenant's personal possessions.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to grant temporary possession and access to the rental unit for the purpose of retrieving the tenant's property?

Is the tenant entitled to an order to force the landlord to return the tenant's personal possessions?

Background and Evidence

The tenancy began in 2009 and the tenant was forced to move out on May 15, 2014.

The parties testified that a fire in the multi-level apartment building caused this tenant and others to be evacuated from their rental units.

The landlord testified that on May 22, 2014, the landlord deemed that the tenancy was frustrated as of May 15, 2014, and issued a "*Letter of Frustration*" to the tenant on May 22, 2014. According to the landlord, they considered this notification as sufficient Notice under the Act to terminate the tenancy.

The tenant testified that they were coerced into signing a mutual agreement to end the tenancy as of May 15, 2014. However the tenant is not disputing the termination of the tenancy agreement, despite this allegation.

However, the tenant testified that the parties had entered into an agreement in which the tenant would be provided unfettered access to the unit on August 5, 6, 7 and 8, 2014. The tenant seeks an order to force the landlord to comply with this arrangement.

The landlord's position is that the tenant's possession cannot be released to the tenant because the fire rendered the residential property uninhabitable. The landlord testified that an environmental company report has determined that the unit is unsafe due to air quality issues caused by asbestos, mold, water and smoke damage and this would not allow any tenant to return to the rental unit to collect personal property.

In addition to the above, the landlord stated that the property could not be released as it is contaminated. The landlord pointed out that the cost of reclamation should be borne by the tenant and their own insurance company.

Analysis

It is clear that, whether done in accordance with the Act or not, this tenancy ended on May 15, 2014. I find that, since the event in question, the landlord has taken possession of the tenant's personal property and barred the tenant from retrieving her property, on the alleged basis that the report of their environmental consultants would prevail over the Residential Tenancy Act in this matter. I find the landlord has retained the tenant's personal property after this tenancy has ended, in violation of section 25 of the Residential Tenancy Regulations, which provides that the landlord's obligations include the following actions:

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.*

Section 30 of the Regulation states that, when dealing with a tenant's personal property the 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.

I must point out that the above provisions and required protocol normally applies to “*abandoned*” property. However, I find that in this instance the tenant’s personal property was confiscated, not abandoned. That being said, I find that the due diligence obligations with respect to the handling of property still apply.

In the case before me, I find that the landlord has violated the Act by denying the tenant access to retrieve their personal property without undue delay. I find that the legislation does not permit a landlord to confiscate property or withhold the tenant’s property except in restricted circumstances when the property is abandoned by the tenant and the landlord follows the detailed protocol under the Regulations.

I find that, if the landlord chooses to maintain their initial position that it is not safe for the tenant to enter the unit, then I would find it necessary to order that the landlord prepare all of the tenant’s personal items for safe removal, relocate them to a secure storage area without delay and present the tenant with an opportunity at the earliest convenience to retrieve all of her property from this storage area.

If, as the landlord has initially claimed, the personal property in question is too contaminated to even be released at all, I find that it would be necessary to issue an order against the landlord forcing them to restore the contaminated property to a harmless condition that will render it at low risk to remove, after which the landlord must release the items to the tenant in order to comply with their statutory responsibilities under the Act.

However, if the landlord is ready to consent to the specific removal request by the tenant, as they indicated they are, then I hereby order the landlord, in accordance with section 65(e) of the Act, to allow unfettered access to the unit and make the tenant’s personal property in its entirety available for the tenant and any other persons of her choosing, to retrieve over the period from 7:00 a.m. August 5, 2014 until 10:00 p.m. August 8, 2014, inclusive.

The landlord is ordered to provide the tenant with a key to the suite anytime before August 5, 2014 in preparation for the property removal.

I further order that, on or before August 5, 2014, the landlord must provide the tenant with a complete list of the contents of the tenant’s suite. I order that both the landlord and the tenant review and sign the inventory list once the removal is complete, to indicate what items the tenant has retrieved. The tenant may make notations on this

document before signing it of any missing or damaged property for the record. I order that the landlord must then provide the tenant with a copy of the completed and signed inventory list, Including the tenant's comments.

Finally, I order that, any items that the tenant chooses not to remove by August 8, 2014, will become the Landlord's responsibility to dispose of as they see fit.

The tenant is entitled to be reimbursed the \$50.00 cost of this application and I hereby grant the tenant a monetary order for this amount. This order must be served on the landlord and may be enforced through BC Small Claims Court if necessary.

Conclusion

The landlord has been ordered to make the tenant's personal property in its entirety available for the tenant to retrieve between August 5 and August 8, 2014, or in the alternative to render the items safe to move and transport them to a storage area for retrieval by the tenant. The landlord is also ordered to create and provide a written inventory as required under the Residential Tenancy Regulations.

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 29, 2014

Residential Tenancy Branch

