



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: RPP, O, FF
Landlord: MNDC,

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant attended with her mother and the landlord's son was present and assisted the landlord with her application.

Issue(s) to be Decided

Is the tenant entitled to an order required the landlord to return her personal belongings?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is a house in Northern B.C. The tenancy began in 2007. The rent was \$600.00 per month. On May 13, 2013 the landlord was granted a monetary award for unpaid rent and an order for possession effective two days after service on the tenant. The landlord did not take steps to enforce the order for possession until she served the order on the tenant on August 19, 2013. The landlord testified that the tenant did not move out of the rental unit and in October she obtained a Writ of Possession from the Supreme Court and hired a bailiff to evict the tenant.

The tenant was evicted by a bailiff in November, but for reasons that were not explained to me, the tenants belongings remained in the rental unit until March 2014, when the landlord had them moved into two storage facilities. As of the date of the application the tenants belongs are in the storage facilities. On May 15, 2014 the tenant applied for the return of her goods. She said in her application that:

- Tenant would like to retrieve belongings that were in unit, landlord refuses to give belongings back without \$5,000.00 payment and is seeking to get belongings back.

The landlord submitted an application for dispute resolution on June 11, 2014. In her application the landlord claimed payment of the sum of \$4,013.29. She said in her application that she was claiming:

Monetary order for damage, moving & clean-up costs, bailiff fees and storage costs incurred since executing Writ of Possession. Dismiss tenant's claim because tenant failed to serve application on landlord. (only presented a blank landlord's dispute form)

The tenant testified that she served the landlord with a copy of her application for dispute resolution, filled out in the same fashion as the one filed at the Residential Tenancy Branch. The landlord said at the hearing that the application she received was blank, but she did not provide a copy as evidence.

The landlord submitted a handwritten list of monetary amounts with a stated total of \$7,912.79. The landlord's son said that the landlord intended to amend her claim to claim this increased amount. The landlord did not prepare or file or serve any form of amended application for dispute resolution and she did not provide receipts for any of the expenses that she set out in the handwritten list that she submitted.

The tenant testified at the hearing that she continued to reside on the rental unit until November because the landlord wanted to sell the rental property to her and the tenant's mother was attempting to obtain the necessary financing to purchase the property. The tenant said that she paid the previous monetary order for outstanding rent. The landlord said that the tenant was evicted after the tenant's mother failed to obtain financing to purchase the rental property.

The tenant said at the hearing that she was prepared to pay the amount of 4,031.29 claimed by the landlord in her application, provided that the landlord immediately permit her to pick up all of her goods and belongings held by the landlord or placed in storage. The tenant did not submit a list of the goods and belongings that she was seeking to recover and the landlord did not submit any inventory or list of the tenant's belongings, although she is required by section 25 (1) (b) of the *Residential Tenancy Regulation* to keep a written inventory of the tenant's property.

The landlord's son said that the landlord was unaware that she needed to provide receipts or invoices for her claimed expenses. He said that the landlord wanted to file a

new application for dispute resolution to claim the increased amount and would provide documents to support the claim when she files a new application.

Analysis

The Residential Tenancy Regulation provides by section 26 as follows:

Tenant's claim for abandoned property

- 26** (1) 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.

The landlord has not provided an inventory of the tenants good's, but she has stored goods belonging to the tenant and the tenant has claimed those goods and requested their return. On May 15, 2014 the tenant filed her application to request the return of her belongings. On June 11, 2014 the landlord filed her application in reply, claiming payment of the sum of \$4,031.29, said to be the amount owed by the tenant for all of the costs of removing and storing the tenant's property and all of the amounts claimed to be owed by the tenant to the landlord under the tenancy agreement and relating to the eviction of the tenant.

At the hearing the tenant testified that she was prepared to pay the amount claimed by the landlord in her application for dispute resolution in exchange for the return of all of her belongings. The landlord responded through her son and said that payment of the amount claimed in the landlord's application would not be acceptable. He said that the landlord required payment of the sum of \$8,000.00 before the tenant's belongings would be released and that the landlord would file a new application to claim the increased amount. I find that the landlord should not be permitted to withdraw her claim so as to claim an increased amount from the tenant for the return of her belongings. The tenant

has received the landlord's claim and has agreed to pay the amount stated, but the landlord has now changed her position.

The landlord has not filed or served an amended application. She stated in her application the amount claimed from the tenant, which was the sum of \$4,031.29. The tenant has agreed to pay that amount. I find that the landlord, having stated the amount of her claim is not now entitled to increase the amount claimed from the tenant by nearly double her initial claim made on June 11, 2014. I note as well that the landlord has not supplied documents to support her claim, either in the amount stated, or in the increased amount. I find that the landlord is bound by the claim she submitted and based on the tenant's acceptance of the amount claimed I grant the landlord a monetary award in the amount of \$4,031.29. This award is given in full and final satisfaction of all claims by the landlord arising out of the tenancy.

I order that upon payment to the landlord of the sum of \$4,031.29, by or on behalf of the tenant, the landlord immediately return to the tenant all of the belongings of the tenant held by the landlord or that are in the landlord's possession or control.

Conclusion

I grant the landlord a monetary order under section 67 in the amount of \$4,031.29. This order may be registered in the Small Claims Court and enforced as an order of that court.

If the tenant promptly pays to the landlord the full amount of the above monetary award, the landlord must immediately release and return to the tenant all of her possessions and belongings held or stored by the landlord.

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 10, 2014

Residential Tenancy Branch

