



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

This was the hearing of an application brought on behalf of the tenant. The hearing was conducted by conference call. The tenant's father attended on his behalf and the respondent attended with her legal counsel.

Issue(s) to be Decided

Is the applicant entitled to a monetary award and if so, in what amount?
Should the respondent be directed to return specific goods to the applicant?

Background and Evidence

The rental unit is a suite in a house that is co-owned by the respondent and by her former husband Mr. D. N. who is the applicant's son and his representative at this hearing. The applicant, who is 93, did not appear at the hearing, but was represented by his son. The rental property is a house in North Vancouver. In 2010 the applicant and his wife moved into a basement suite in the rental property. When the applicant moved in, his son and the respondent who is named as landlord, lived in the upstairs portion of the house. The applicant's son moved out of the house in 2012, but he continues to be a co-owner of the rental property. The applicant moved out of the rental unit in May, 2013. A previous application by the respondent seeking unpaid rent was dismissed by decision dated June 12, 2013.

There are two aspects to the present application; first the applicant has request the return of goods that were left at the rental property and were not returned after the applicant moved out in May. It is alleged that the applicant has been prevented from obtaining the items. The property sought to be returned is:

- The base or legs to a dining room table

- Dining chairs
- A sewing machine
- Family pictures
- A tool box
- A microwave oven

The application also claimed payment of the sum of \$9,000.00 said to be overpayments of rent from the commencement of the tenancy until its end in May, 2013.

Counsel for the respondent submitted that the applicant's representative has a conflict of interest and is not a proper person to be acting on behalf of the applicant because he was also the applicant's landlord until sometime in 2012 when he moved out of the property due to the breakup of the marriage, but he still continues to be a co-owner of the rental property.

The respondent said that the applicant has the dining chairs; they are no longer at the rental property. She said she is unaware of any family pictures and she has none belonging to the applicant. The respondent said that the microwave was purchased for the rental unit and was not intended as the applicant's personal property. It remained in the rental unit when it was re-rented and cannot now be returned. She said that the other items are all available to be picked up and are stored on the property in a location that the applicant's son has been able to access after the tenancy ended. Counsel for the respondent requested that the applicant consult with him to arrange a convenient time to attend at the rental property to pick up items.

Analysis

I am satisfied that the applicant will be permitted to have access to the rental property to pick up the items mentioned that belong to him. I find that there is no need for an order directing the landlord to return specific items. The applicant should speak to the respondent's lawyer to arrange a time to retrieve items from the rental property.

With respect to the application for a monetary award, the applicant's representative appeared as agent for the applicant. The applicant did not attend the hearing. As a co-owner of the rental property and as a landlord during a significant part of the claimed tenancy, the applicant's agent is not a proper party to represent or act on behalf of the applicant in this proceeding. Because the applicant is not properly represented in this proceeding the application for a monetary award is dismissed with leave to reapply. The applicant should be independently represented if a new proceeding is brought; his

son should not be involved in the preparation of a new application or the representation of the applicant at a new hearing.

Conclusion

The application for a monetary award for the overpayment of rent is dismissed with leave to reapply. Leave to reapply does not constitute an extension of any applicable time limit. I make no award with respect to the filing fee paid for this application.

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: September 19, 2014

Residential Tenancy Branch

