

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u> OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 10, 2014, by the Landlord seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent; to keep the pet and or security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants.

The hearing was conducted via teleconference and was attended by the Landlord and the three Tenants. Each person gave affirmed testimony and confirmed receipt of package served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Have the Tenants vacated the property?
- 2) Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord testified that the parties entered into a written tenancy agreement for a month to month tenancy that commenced sometime in 2012. The Tenants were

required to pay rent of \$1, 500.00 per month and the Landlord collected \$750.00 as the security deposit.

The Tenants testified that they had a verbal tenancy and not a written tenancy. Their verbal agreement started September 2012 for the monthly rent of \$1,400.00. The Tenants said that they paid \$750.00 as the security deposit and argued that they also paid \$300.00 as a pet deposit.

It was undisputed that the Landlord personally served the Tenants with a 10 Day Notice; however, the Tenants alleged that they only received one page of the Notice and not two pages.

The Tenants testified that they vacated the property on November 1, 2014. J.E. stated that she owes the Landlord \$300.00 in unpaid rent, M.M. said between him and D.M. owed the Landlord \$750.00 in rent. D.M. submitted that she and M.M. owed the Landlord \$700.00 and they owe nothing for utilities because utilities were included in their rent.

In closing, the Landlord testified that the Tenants had changed the locks to the rental unit and had left possessions behind which caused him to think they were still occupying the unit. He requested the Order of Possession and the Monetary Order.

The Tenants provided oral testimony of their forwarding address as noted on the front page of this decision and stated that they had removed all of their possessions from the property.

Based on the above, I issued an Oral Order that granted the Landlord immediate possession of the property and any debris or possessions remaining in the rental unit may be disposed of by the Landlord. I have also copied part 5 of the Regulations to the end of this decision for future reference.

Analysis

The Residential Tenancy Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, and in the presence of undisputed testimony confirming that there was a tenancy of some form, either written or oral, there was still a tenancy which is recognized and enforceable under the *Residential Tenancy Act*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent <u>in full</u> or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants did not dispute the 10 Day Notice and they testified that they had vacated the property on November 1, 2014. After careful consideration of the Landlord's submission, I accept that the Tenants had changed the locks and when they vacated the property they did not inform the Landlord, did not give the Landlord the keys, and they left possessions inside the unit that made it appear they were still occupying the unit.

The Landlord claimed unpaid rent of \$1,030.00 that was due October 1, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. The Tenants acknowledged that they owed the Landlord either \$1,000.00 (\$300.00 + \$700.00) or \$1,050.00 (\$300.00 + \$750.00) and the Landlord claimed \$1,030.00.

Based on the aforementioned undisputed 10 Day Notice, and in the presence of the Tenant's testimony that they owed some money, I find the Landlord has met the burden of proof and I award them the accumulated unpaid rent that was due October 1, 2014 in the amount of **\$1,030.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Offset amount due to the Landlord	\$ 330.00
LESS: Security Deposit \$750.00 + Interest 0.00	<u>- 750.00</u>
SUBTOTAL	\$1,080.00
Filing Fee	50.00
Unpaid Rent up to October 31, 2014	\$1,030.00

In the presence of disputed verbal testimony, and in the absence of documentary evidence, I find there is insufficient evidence to prove that a pet deposit had been paid. Therefore, if the Landlord is holding a pet deposit in trust, I order that it be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

During the hearing an Oral Order was issued which granted the Landlord immediate possession of the property and any debris or possessions remaining in the rental unit may be disposed of by the Landlord.

The Landlord has been awarded a Monetary Order in the amount of **\$330.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 21, 2014

Residential Tenancy Branch

Residential Tenancy Regulations Part 5 Abandonment of Personal Property

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
- (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
 - (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
 - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

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).

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.

Notice of disposition

- **27** (1) For the purposes of this section:
 - "financing statement" has the same meaning as in the Personal Property Security Act;
 - "security interest" has the same meaning as in the Personal Property Security Act;
 - "serial number" has the same meaning as in section 10 of the Personal Property Security Regulation [collateral described by serial number] made under the Personal Property Security Act.

(2) Not less than 30 days before disposing of an item of personal property referred to in section 24, the landlord must

- (a) give notice of disposition to any person who
 - (i) has registered a financing statement in the Personal Property Registry using the name of the tenant or the serial number of the property, and
 - (ii) to the knowledge of the landlord, claims an interest in the property, and
- (b) publish the notice in a newspaper published in the area in which the residential property is situated.
- (3) The notice referred to in subsection (2) must contain
 - (a) the name of the tenant,
 - (b) a description of the property to be sold,
 - (c) the address of the residential property,
 - (d) the name and address of the landlord, and
 - (e) a statement that the landlord will dispose of the property unless the person being notified takes possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person.
- (4) The notice referred to in subsection (2) must be given in accordance with section 72 of the *Personal Property Security Act[service of statements, notices and demands]*.

Holder of a security interest

- **28** (1) When a notice referred to in section 27 (2) has been served on a person who holds a security interest, the tenant is deemed to be in default of the obligation secured.
 - (2) Before taking possession of the property, the person who holds a security interest must pay to the landlord moving and storage charges incurred by the landlord under this Part.

Disposal of personal property

- **29** (1) For the purposes of this section, "administrator" has the same meaning as in the *Unclaimed Property Act*.
 - (2) If a landlord has complied with section 25 [landlord's obligations], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,

(a) a person referred to in section 27 (2) [person entitled to notice of disposition] who has been given a notice as provided in that section has taken or demanded possession of the property,

- (b) a person who holds a security interest in the property has taken or demanded possession of the property, or
- (c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.
- (3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to
 - (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing, storing, advertising and disposing of 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.
- (4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.
- (5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.
- (6) The purchaser of personal property disposed of in accordance with this Part acquires a marketable title free of all encumbrances on payment of the taxes owing in relation to the personal property or the sale.
- (7) On the application of an interested person, a court may make an order
 - (a) prohibiting or postponing disposition of the property under this section on any conditions the court considers appropriate,
 - (b) determining the right of a person claiming an interest in or right to possession of the property or the right of the landlord to dispose of it, or
 - (c) that an action be brought or an issue be tried.

[am. B.C. Reg. 234/2006, s. 19.]