



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RPP

Introduction

This hearing was scheduled in response to the tenant's application in which the tenant has applied requesting the landlord return the tenant's quad.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Must the landlord be ordered to return the tenant's personal property?

Background and Evidence

The parties agreed that the tenancy commenced in mid-2013; rent was \$700.00 per month and the tenant was to pay utility costs. There was no signed tenancy agreement.

The parties agreed that the tenant vacated at the end of May 2014.

The rental unit is situated on a lot that has 2 adjoining lots owned by the landlord. The landlord resides on the lot furthest from the rental unit.

When the tenant vacated the property he left his 2005 Kawasaki quad on the landlord's property. The landlord said the tenant voluntarily left the quad with the landlord, as he owed the landlord money for utility costs. The tenant had agreed the quad would stay with the landlord until the money owed to the landlord was repaid.

The landlord said that when the tenant gave them the quad to hold as collateral for debt the landlord then had the authority to hold the property as allowed by the Warehouse Lien Act. A copy of that Act was supplied as evidence.

The landlord confirmed that they have an upcoming hearing where they have claimed the cost of unpaid utilities owed by the tenant.

During the week of September 22, 2014 the tenant was contacted and asked what his plans were for his quad. The tenant said he wanted to come and pick up his property. The landlord told the tenant he could have the vehicle once he had the money to pay the debt owed for utilities.

The landlord said that he spoke with a bailiff service who told him he had the right to retain the vehicle, as they have a "possessor's warehouse lien." The landlord also received an email from the tenant's ex-girlfriend stating she understood the tenant had left his quad with them as collateral for debt owed.

The tenant said that he did leave the quad with the landlord as the landlord told him he had to do so. The tenant said he felt he had no choice but to leave his property. When he attempted to retrieve the vehicle in September the landlord told him he was not entitled to the property.

The copy of the Warehouse Lien Act supplied by the landlord defines a warehouser as a person lawfully engaged in the business of storing goods as a bailee for hire. The Act states that every warehouser has a lien on goods deposited with the warehouser for storage, whether deposited by the owner of the goods or by the owner's authority.

Analysis

From the evidence before me there is no dispute that the landlord is holding property which belongs to the tenant. The tenant did leave the property with the landlord and I have accepted that when he did so he either did not understand that he was not obliged to allow the landlord to retain his personal property or that since this that time he has come to realize he is entitled to the return of his property.

The landlord said they are relying on the Warehouse Lien Act. From my reading of the definitions in that Act a warehouser is a person who is lawfully engaged in the business of storing goods as a bailee for hire. There was no evidence before me that the landlord is engaged in the business of storing goods as a bailee for hire.

Section 62 of the Act provides, in part:

62 (1) *The director has authority to determine*

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

Therefore, the authority to determine matters related to personal property of the tenant's falls within the jurisdiction of the Act. Whatever agreement the parties may have had, I find that agreement is in dispute as part of a tenancy; which is within the jurisdiction of the Residential Tenancy Act.

Section 65 of the Act provides:

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned

Whether the tenant believed he was required to leave the property with the landlord or did so voluntarily, there is no dispute that the property belongs to the tenant and has been left with landlord as the result of the tenancy agreement between the parties. There is an absence of any written agreement, relinquishing the quad to the landlord, or any other evidence that the landlord has the authority to hold the tenant's personal property. The tenant has indicated that he wishes to retrieve the property; the landlord has refused to do so and has retained the property, in the absence of any authority.

Therefore, I Order, pursuant to section 65(e) of the Act; that the quad must be returned to the tenant; forthwith. The tenant may contact the landlord to inform the landlord of the date and time he will go to the property to retrieve the quad.

The landlord confirmed that there is a dispute resolution hearing scheduled to consider their claim for compensation. That is the appropriate method of settling disputes related to a tenancy.

Conclusion

The landlord is Ordered to return the tenant's personal property, forthwith.

This decision is final and binding and 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 07, 2014

Residential Tenancy Branch

