



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for an order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement.

The Tenant stated that on September 26, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were placed on the hood of the Landlord's truck. He stated that when he placed the documents on the hood of the truck the Landlord was leaning on his truck and he told the Landlord they were documents for a dispute resolution proceeding. He stated that the Landlord drove away without removing the documents from the hood of his truck and that the next day the Tenant saw them lying on the ground.

On the basis of the information provided by the Tenant, I find that the aforementioned documents were served to the Landlord on September 26, 2014 in accordance with section 71(2)(b) of the *Act*. A party cannot avoid service by simply refusing to accept documents that another party is clearly attempting to serve. This hearing therefore proceeded in the absence of the Landlord.

Issue(s) to be Decided

Is there a need to order the Landlord to comply with the *Act* or the tenancy agreement?

Background and Evidence

The Tenant stated that this tenancy began in March of 2013 and that he agreed to pay \$250.00 in exchange for one room, which had no access to kitchen or bathroom facilities.

The Tenant stated that sometime in early September of 2014 the Landlord gave him a typed document, a copy of which was submitted in evidence. This document, which is not dated or signed, declares that the room must be vacated by October 01, 2014.

The Tenant stated that on September 29, 2014 he attempted to return to his room and he found the gate leading to the residential property was locked. He stated that he has never had a key to this gate and he was unable to access his room as a result of the locked gate.

The Tenant stated that he left the area to contact the police and when he returned the gate was open. He stated that after speaking with the Landlord the police told him that the Landlord wanted all of the Tenant's property removed by 6:00 p.m. on September 30, 2014.

The Tenant stated that he was able to remove some property from the rental unit on September 30, 2014 and that when he returned for the final load at 5:45 p.m. the gate was locked, so he could not recover the rest of his property.

The Tenant stated that the Landlord granted him access to the residential property again on October 03, 2014 or October 04, 2014, at which time he found most of the remainder of his personal possessions in a pile outside of the building. He stated that he was able to recover some property from the pile at that time.

The Tenant stated that when he was on the property on October 03, 2014 or October 04, 2014 the Landlord prevented him from recovering his scooter and freezer, so he could not move those items. He stated that the Landlord has not returned his telephone messages so he has been unable to make arrangements to recover those items.

The Tenant believes he has been illegally evicted; that the Landlord did not have the right to move his property out of the rental unit; and that the Landlord does not have the right to prevent the Tenant from recovering the remainder of his personal property.

The Tenant stated that he has found alternate accommodation and that he no longer wishes to reside in the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement that is governed by the *Residential Tenancy Act (Act)*.

The *Act* authorizes a landlord to end a tenancy in accordance with section 46, 47, 48, 49, 49.1, and 50 of the *Act*. To end a tenancy in accordance with any of these sections a landlord must provide a tenant with written notice that complies with section 52 of the *Act*.

I find that the typed document the Landlord gave the Tenant in September of 2014 which declared that the room must be vacated by October 01, 2014 does not comply with section 52 of the *Act* because it does not give the address of the rental unit; it is not signed or dated; it is not in the approved form; and it is missing a significant amount of the information that is included on the approved form that is created by the Residential Tenancy Branch. I therefore find that this document did not serve to end this tenancy.

Section 31 of the *Act* stipulates that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. I find that the Landlord contravened section 31 of the *Act* when he locked the gate leading to the rental unit on September 29, 2014 and any date:

thereafter, without providing the Tenant with a means of accessing the unit.

Section 26(3) of the *Act* stipulates whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property. On the basis of the undisputed evidence, I find that the Landlord breached the *Act* when he moved the Tenant's personal belongings out of the rental unit and when he did not provide the Tenant with unrestricted access to her personal belongings. I find that the Landlord continues to breach the *Act* by interfering with the Tenant's ability to move the remainder of his personal property.

I order the Landlord to comply with all of his obligations under the *Act* with respect to this tenancy. As the Tenant has indicated that he no longer wishes to reside in the rental unit, I find that there is no reason to specifically order the Landlord to allow the Tenant to occupy the unit or to provide him with access to the rental unit.

I specifically order the Landlord to make every reasonable attempt to facilitate the return of the remainder of the Tenant's personal property. This includes returning phone messages left for him by the Tenant; providing the Tenant with access to his personal property on any time and date specified by the Tenant, which must be between 9:00 a.m. and 9:00 p.m. on a business day; and cooperating with any directions provided to him by the police in regards to the return of personal property.

Conclusion

I have not awarded any financial compensation to the Tenant for loss or the breach of his right to the quiet enjoyment of the rental unit, as the Tenant has not applied for financial compensation.

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 13, 2014

Residential Tenancy Branch