



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

RPP

Introduction

This hearing dealt with an application by the tenant for an order returning personal property to the tenant. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to an order for return of her personal property and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced June 1, 2014. The monthly rent of \$550.00 is due on the first day of the month. The tenant paid a security deposit of \$275.00. There was not a written tenancy agreement.

The rental unit is a basement suite. The landlord lives upstairs.

In the fall of 2014 the landlord and the tenant signed a Mutual Agreement to End Tenancy effective October 31, 2014. The tenant did not move out of the rental unit on October 31, 2014.

The landlords filed and served an application for dispute resolution claiming an order of possession and a monetary order. The application was heard on December 1, 2014. Neither the tenant nor anyone on her behalf appeared at the hearing. The landlord was granted an order of possession effective five days after service on the tenant and a monetary order which included \$1700.00 for arrears of rent for August, September, October and November. The decision allowed the landlord to retain the security deposit in partial satisfaction of the claim.

The tenant testified that she has serious heart problems which caused her to be hospitalized on several occasions in November 2014. When she was not in hospital she would stay at the rental unit. She had packed her possessions and had moved about one third of her belongings to a friend's home.

The tenant testified that she was admitted to hospital on November 30 and not discharged until December 11. During most of the time she was in the Intensive Care Unit and did not have

access to a telephone. She testified that since then she continues to have heart troubles plus she is experiencing a high-risk pregnancy. The tenant did not file any health records, doctor's letter or other documentation to verify that she had been in hospital on the dates claimed.

The landlord testified that the tenant started moving out in mid-November but kept coming back to feed her cats. On November 27 the cats were removed so they thought that was the end of the tenancy.

The landlord testified that the orders granted in the previous hearing were posted to the door of the rental unit.

The landlord testified that he sent the tenant text messages on December 1 and December 2. On both occasions he received a response saying the tenant was in class. On December 5 he received a text from the tenant saying she would be moving on Sunday. He agreed to that but did not hear from the tenant again until December 22. The landlord did not file copies of the text messages.

The tenant testified that she did not have access to her telephone until December 10 so could not have sent the texts the landlord claimed. She did testify that her sister had her telephone and told her about some texts from the landlord. She did not know if her sister used the telephone. She also testified that it was her sister who was feeding the cats.

The landlord testified that on December 8 they began to inventory the contents of the suite. Over the next week they moved the tenant's belongings into storage, hired a cleaning company to clean the suite, and re-rented the unit as of December 15, 2014. They changed the locks before the start of the new tenancy. All of the items removed from the suite are still in storage.

The landlord says that on December 22 he received a text message from the tenant stating that:

"I was hospitalized for two weeks and did not have a phone. [TM] whom you know very well, will be coming to pick up my belongings tomorrow. AS you said that you were going to store it all in your garage for up to 2 months. I have the text message stating that still."

Both parties testified that the landlord's response was that she had to pay her debt to the landlord before the items would be released to the tenant.

The next communication between the parties was on January 17. The tenant sent the landlord a text asking to reclaim her property. The landlord did not reply.

The tenant went to the rental unit for the first time in mid-January with the police. The landlord showed the police copies of the decision and orders. The police spoke to the Residential Tenancy Branch and left.

The tenant filed this application for dispute resolution on April 10, 2015.

Analysis

The *Residential Tenancy Regulation* sets out the two circumstances in which a landlord may consider that the tenant has abandoned personal property. They are:

1. The tenant leaves personal property in a rental unit he or she has vacated after the tenancy agreement has ended.
2. The tenant leaves personal property in a rental unit they have not ordinarily occupied for a continuous period of one month and for which he or she has not paid, or from which the tenant has substantially removed all of his or her personal property;
and,
the landlord has received an express oral or written statement of the tenant's intention not to return to the residential property, or the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonable be expected to return to the residential property.

These provisions are very technical and can be difficult to apply to real-life situations as it is not always clear when a tenant has moved out of a rental unit. For example, some tenants leave a surprisingly large volume of furniture, chattels including children's toys and equipment, and food behind when they move out of a rental unit.

In this case the tenant's presence at the unit in November was sporadic; a significant portion of her belongings were removed by mid-month; she had not paid rent for months; and by the end of the month her pets had been removed. Although the tenant's family knew the landlord was trying to contact her there is no evidence that anyone told him she was in the hospital. All in all, one can see how the landlord might have wondered whether the tenant had moved out or not.

However, given the benefit of hindsight, it appears that this situation did not meet the requirements of the *Regulation* in all respects.

This tenancy ended on October 31, 2014 pursuant to the Mutual Agreement to End Tenancy. After that the tenant was an over holding tenant which is why the landlord had to apply for and obtain an order of possession. However, the evidence is not clear that the tenant had vacated the rental unit. Accordingly, the landlord has not established that the first circumstance applies to this situation.

The second circumstance does not apply because the tenant had not left the unit unoccupied for a full month before the landlord packed up her belongings.

I find that the tenant cannot be considered to have abandoned her personal property within the meaning of section 24 of the *Regulation* and, accordingly, the landlord must return the items to the tenant.

As the items cannot be considered abandoned personal property the landlord cannot require reimbursement of the costs of removing and storing the property or of any amounts payable by the tenant to the landlord under the legislation or the tenancy agreement, such as arrears of rent, before releasing the items to the tenant.

It is to everyone's benefit if this matter were concluded as quickly as possible. Accordingly, the tenant is ordered to make the necessary arrangements to have her belongings picked up within three weeks of receiving this order.

Conclusion

The landlord is order to return the tenant's personal property to her and the tenant is order to make the necessary arrangements to have them picked up within three weeks of receiving this order.

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: June 15, 2015

Residential Tenancy Branch

