



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Robert Everest and Julia Everest 8607486 Canada Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, FF

Introduction

This was an application by a tenant for recovery of personal property. The landlords admitted service of the application. All parties were present at the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order compelling the landlords to return the property?

Background and Evidence

The tenant testified that her fiancé JM permitted her to drive a vehicle which was normally parked in one of her two allotted parking spaces. The registered owner of the vehicle is CL who is JM's cousin. CL testified that he purchased it from ICBC as part of a settlement resulting from an accident. The tenant testified that CL sold it to JM but the ownership had not been transferred yet. The tenant permitted JM and CL to park the salvaged vehicle and the replacement vehicle in her allotted parking spaces.

That salvaged vehicle was in an accident and written off by ICBC. The tenant testified that the landlords verbally and by letter asked her to remove the salvaged vehicle from the parking spot several times. In October the tenant discovered that the landlords had removed the vehicle. The tenant requested that I order it to be returned to her.

The landlord RE testified that he requested verbally and by letters dated July 15, 2015 and August 4, 2015 that the tenant remove the salvaged vehicle. The tenant did not respond so the landlords had the vehicle towed and impounded. It is currently in storage. RE admitted that he did not have permission to remove the vehicle. RE submitted that the vehicle was an eyesore, disturbed other tenants and did not belong to the tenant.

Analysis

Pursuant to her tenancy agreement the tenant was permitted to use two parking spaces. The tenant permitted CL and or JM to park a vehicle on both of those spots. In essence the tenant was responsible for the storage of those vehicles to third parties.

The landlord admitted removing the salvaged vehicle without permission from the tenant's parking spot.

The Regulations made pursuant to the Residential Tenancy Act only permit a landlord to remove property of the tenant if the tenant has abandoned the unit. Section 24 of the Regulations is as follows:

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.

(my emphasis added)

Section 62 and 65 of the Act give an arbitrator wide jurisdiction to make any determination and provide any remedy flowing from a tenancy. Section 62 of the Act states as follows:

Director's authority respecting dispute resolution proceedings

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.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 65(1) (e) of the Act is as follows:

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

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

I find that the tenant did not abandon the unit, and landlord did not have permission or any lawful authority to remove property in the custody of the tenant: stored with the consent of the tenant on her parking spot which was allotted to her through her tenancy agreement. Accordingly pursuant to sections 62 and 65(1)(e) of the Act, I Order the respondents at their own expense to return to the tenant the salvaged vehicle which they moved from the parking spot.

Conclusion

I ordered the landlords to return at their own expense the property that they removed: a salvaged vehicle to the tenant. I award the tenant the \$ 50.00 filing fee and permit her to deduct this amount from her next rental payment or set it off against any arrears.

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 24, 2015

Residential Tenancy Branch

