



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ktunaxa National Council
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR OLC O

Introduction

This hearing convened pursuant to the tenant's application to cancel a notice to end tenancy, as well as for an order that the landlord comply with the Act, regulation or tenancy agreement. The tenant and the tenant's advocate called in to the teleconference hearing but the landlord did not.

The tenant submitted evidence to establish that the landlord was served with the application for dispute resolution and notice of hearing by registered mail sent on September 21, 2015. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the landlord was deemed served with notice of the hearing on September 26, 2015, and I proceeded with the hearing in the absence of the landlord.

Preliminary Issues

At the outset of the hearing the tenant stated that the landlord had illegally evicted her on November 2, 2015, despite the fact that the landlord had already received the rent for November. I therefore dismissed the portion of the tenant's application regarding cancelling the notice to end tenancy.

The tenant also stated that the landlord has put the tenant's belongings in a shed, and the tenant does not have access to her belongings. I therefore found it appropriate to amend the tenant's application to add a claim for return of personal property.

In the hearing the tenant stated that the rental unit is not on Indian land. The *Residential Tenancy Act* does not apply to tenancy agreements on Indian land where the landlord is an Indian or an Indian Band; however, as the unit is not on Indian land, I have jurisdiction to hear this matter.

The tenant also stated that the landlord believed the *Residential Tenancy Act* does not apply to them because they are a not for profit organization. Section 4 of the Act and section 2 of the regulation under the Act specifically outline the organizations that do not fall under the Act. In the absence of evidence from the landlord that they are specifically excluded from the Act, I find that the Act does apply to this tenancy.

Issue(s) to be Decided

Should I order the landlord to return the tenant's personal property?

Background and Evidence

The tenant stated that she was illegally evicted on November 2, 2015, and the landlord put the tenant's personal belongings in a storage shed. The tenant stated the landlord has informed her that she cannot go on the rental property.

Analysis

Under section 65 of the Act, a landlord can be ordered to return a tenant's personal property. In this case, I find it appropriate to order the landlord to return the tenant's personal property. I order that the landlord do so on or before November 20, 2015. If the landlord does not return all of the tenant's personal property, it is open to the tenant to apply for monetary compensation for those items.

Conclusion

I order the landlord to return the tenant's personal property, on or before November 20, 2015.

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 9, 2015

Residential Tenancy Branch

