



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenant's submitted documentary evidence. The tenant stated that she did not receive the landlord's documentary evidence. The landlord stated that because she received the tenant's notice of hearing package and submitted documentary evidence on January 18, 2016 that she was only able to submit her own documentary evidence late on February 1, 2016. The landlord's documentary evidence consisted of mainly 11 pages of written responses to the tenant's claim. On this basis, I find that the landlord's documentary evidence shall be excluded. The landlord was advised that she could provide her evidence orally during the hearing.

Preliminary Issue

I accept the undisputed testimony of both parties and find that both have been properly served with the notice of hearing package as per sections 88 and 89 of the Act. The landlord is deemed to have received the notice of hearing package as per section 90 of the Act.

At the outset the tenant advised that she is no longer residing at the rental property and is providing a new mailing address for the Residential Tenancy Branch File. As such, the file shall be updated with the new mailing address.

Issue(s) to be Decided

Is the tenant entitled to an order for the return of personal property?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and my findings around each are set out below.

Although neither party submitted a copy of the signed tenancy agreement, both parties agreed that the tenancy began on November 13, 2015 on a fixed term tenancy for 4 months and then thereafter on a month-to-month basis. The monthly rent was \$800.00 payable on the 1st day of each month and a \$400.00 security deposit was paid.

The tenant stated that she was evicted without notice and seeks the return of her personal property. The tenant stated that the landlord has stolen her property and will not return it.

The landlord disputes the tenant's claim stating that the tenant failed to pay January rent and abandoned the rental unit without notice. The landlord stated that the tenant sent an email dated December 30, 2015 as notice to vacate the rental unit on January 15, 2016.

The tenant provided copies of email exchanges between the two parties. On page 17 of an email dated December 30, 2015 the tenant wrote:

*Hi L., I am writing to inform you I will be moved out on or before Jan. 15, 2016.
My Mother S.H. will be handling further details.*

The landlord confirmed that the tenant's personal belongings were stored as per section 25 of the Residential Tenancy Act Regulations. The landlord stated that the tenant's personal property was available for her to pick up upon reimbursing the landlord for storage of the tenant's personal property and for unpaid rent for January 2016 of \$800.00.

In an email dated January 2, 2016 the landlord wrote:

Hey A. I had a chat with your mother today she expressed concern for the safety of your belongings. I will change the code so "they (the people you worked with) cannot get into the suite. Please let me know when you will be back. I would prefer to deal with you only as your mother is not well informed.

Analysis

Based upon the undisputed testimony of both parties I find that the landlord has retained the tenant's personal property as per sections 24 of the Residential Tenancy Act Regulations, which states in part:

Abandonment of personal property

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.

- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Based upon the disputed testimony of both parties and the submitted documentary evidence provided by both parties, I find that the landlord was incorrect in considering that the tenant abandoned the rental unit. The email exchange clearly shows that the tenant gave notice on December 30, 2015 to return possession of the rental unit on January 15, 2016. Although the tenant failed to pay rent for January 2016 the tenant was not absent from the rental unit continuously for one month nor did she remove a substantial portion of her personal belongings. The landlord did not receive express oral or written notice of the tenant's intent to not return to the rental unit.

I find that as there was no abandonment by the tenant, the tenant is entitled to the return of personal property. The tenant's application is granted. The landlord is ordered to immediately return all possessions of the tenant in their custody.

Conclusion

The tenant's application is granted.

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: February 04, 2016

Residential Tenancy Branch

