



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 for Dispute Resolution seeking return of his personal property.

The hearing was conducted via teleconference and was attended by the tenant's agent.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 17, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Canada Post tracking information records that the landlord refused to accept the registered mail. As such, I find the landlord is deliberately attempting to avoid service of these documents. As a result, I find that the landlord has been sufficiently served with the documents pursuant to Section 71(2)(b) of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to return the tenant's personal possessions, pursuant to Section 65 of the *Act*.

Background and Evidence

The tenant's agent stated the tenancy began approximately 4 years ago for a monthly rent of \$450.00 due before the 1st of each month.

The agent submitted that on December 30, 2015 the tenant was taken to hospital by ambulance and has not been able to return to the rental unit since. At the time of this hearing he remains hospitalized.

The agent believed, but was not certain, that the landlord is the one who called the ambulance for the tenant. She states that she does know that the landlord spoke with the tenant's physician and a social worker responsible for assessing the tenant.

The agent submitted that the landlord was aware of the possibility the tenant would not be returning to the rental unit. During the first few weeks of January the tenant's agent's focus was on the tenant and his health. She stated, however, that towards the end of January she contacted the landlord to make arrangements to end the tenancy and arrange to collect the tenant's belongings.

The agent submitted that when she contacted the landlord she told the agent that there was no need to attend the residential property to collect the tenant's belongings because the landlord had thrown everything away. The agent could not confirm if the tenant had paid his January 2016 rent before he was hospitalized.

The agent indicated there were not a lot of possessions but there were personal items and papers that they would like returned.

Analysis

Section 26(3) of the *Act* states that 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.

Residential Tenancy Regulation Section 24 states a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, **or the tenant leaves the personal property on residential property 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 from which the tenant has removed substantially all of his or her personal property. [emphasis added]

While it is not clear from the tenant's agent's submissions if the tenant paid rent for January 2016 Section 26(3) of the *Act* specifically prohibits the landlord from seizing any of the tenant's personal property.

Furthermore, as per Section 24 of the Regulation, the landlord did not have authority under the law to consider the personal property abandoned because he had not vacated the property for a continuous period of 1 month.

As such, I find the landlord must return all of the tenant's possessions immediately.

If the landlord fails to return the tenant's personal property the tenant is at liberty to file an Application for Dispute Resolution seeking compensation for the value of the losses of his possessions.

Conclusion

Based on the above, I order the landlord must return all of the tenant's personal property no later than May 15, 2016.

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: April 06, 2016

Residential Tenancy Branch