



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHOO BROTHERS INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD RPP FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated September 27, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit or pet damage deposit;
- an order that the Landlord return the Tenant's personal property; and
- an order granting the Tenant recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by T.C., an agent. All parties giving evidence provided a solemn affirmation.

The Tenant testified she served the Application package, including the Notice of a Dispute Resolution Proceeding and her documentary evidence, by registered mail, on October 2, 2016. On behalf of the Landlord, T.C. confirmed that the Tenant's Application package was received.

On behalf of the Landlord, T.C. testified that the documentary evidence to be relied upon by the Landlord was served on the Tenant by registered mail on November 29, 2016. The Tenant acknowledged receipt.

No further issues were raised with respect to service or receipt of the above documents. Both parties were represented at the hearing and were prepared to proceed.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the beginning of the hearing, the Tenant confirmed that the Landlord has returned the security deposit and wished to withdraw this aspect of her claim. I grant the Tenant's request and consider this aspect of the Tenant's Application withdrawn. It will not be addressed further in this Decision.

In addition, it was noted that the Tenant's last name appears twice on the Application. Accordingly, pursuant to section 64(3) of the *Act*, and with the Tenant's agreement, I amend the Application so the Tenant's last name appears only once.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return the Tenant's personal property?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A brief history of proceedings between the parties, derived from the Landlord's written submissions and the parties' oral testimony, will provide some context to this dispute. On June 30, 2016, an arbitrator at the Residential Tenancy Branch issued an order of possession in favour of the Landlord. The order was to be effective on July 1, 2016, at 1:00 p.m. Subsequently, the Landlord retained the services of a bailiff, which removed the Tenant's belongings from the suite on July 22, 2016. As noted in the Landlord's written submissions, the items left behind "were deemed to be garbage and of no value by the attending Bailiff."

On the same day the bailiff had removed the Tenant's belongings, the Tenant made an application to the Supreme Court of British Columbia. As a result of those proceedings, the Tenant obtained a temporary stay and was granted access to her suite from July 22-29, 2016.

The Tenant testified that she vacated the rental unit on July 29, 2016. However, she stated that a bed frame made of wooden pallets and some wooden shutters were left behind. The Tenant advised she can still see the shutters in the window.

In reply, T.C. testified the Tenant had numerous opportunities to remove her belongings from the rental unit. Specifically, T.C. advised the Tenant could have removed the wooden pallets or shutters at any time during the period from July 22-29, 2016, or on July 31, 2016, when she was given an opportunity to collect her pet mice. In any event, T.C. stated the wooden pallets have been disposed of. In support, the Landlord submitted photographs of the rental unit, including the wooden pallets. The photographs depict the rental unit in disarray with wooden pallets lying on the floor and stacked against a wall.

With respect to the shutters, T.C. testified that he does not know whether or not the shutters belong to the Tenant, or if they are still in the rental unit. The rental unit has undergone some renovations and they may have been removed.

T.C. described the Tenant's Application as vexatious and frivolous, intended only to cause stress and inconvenience to the Landlord.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

Section 65(1) of the *Act* permits an arbitrator to order that personal property seized or received by a landlord contrary to the *Act* or a tenancy agreement must be returned.

The Tenant states she left a bed frame made of pallets and window shutters in the rental unit. The Landlord testified the Tenant had ample opportunity to remove her belongings before the tenancy ended.

In light of the above, I find that the Tenant has failed to provide me with sufficient evidence that she is entitled to the relief sought. The Tenant had sufficient opportunity to remove her belongings from the rental unit during the period from July 22-29, 2016, and on July 31, 2016, when she was again given access to the rental unit to remove her pet mice. Further, I find that the Tenant has not established, on a balance of probabilities, that the shutters were her belongings. In addition, I find it reasonable for the Landlord to have concluded, based on the opinion of the bailiff and the photographs submitted into evidence, that the pallets were garbage to be disposed of and had no value. Even if I had found that the Tenant was entitled to the return of the pallets and the shutters, I would likely have found them to have been of no value.

Accordingly, the Tenant's Application is dismissed without leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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: December 16, 2016

Residential Tenancy Branch