



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RPP

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord to comply with the Act - Section 62; and
2. An Order to return personal property - Section 65.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to return the Tenant’s personal property?

Background and Evidence

The Tenant states that the tenancy started in May 2015 and ended on March 2, 2016. The Landlord states that the tenancy started on April 14, 2015 and ended mid-February 2016. The Parties agree that the tenancy ended with the Tenant giving notice to move out. The Landlord states that the Tenant had not paid rent and that the Landlord had made an application for unpaid rent. The Landlord states that she is not certain of the outcome. The Tenant states that the Landlord’s application was dismissed. I note that the application referred to by the Landlord for an order of possession and unpaid rent was dismissed in a Decision dated December 15, 2015.

The Tenant states that at the end of the tenancy the Landlord agreed to store the Tenant's 1997 Dodge van at the rental property until March 24, 2016. The Tenant states that on March 23, 2016 when the Tenant went to retrieve the van it was gone. It is noted that the Tenant's application sets out that the Landlord agreed to store the van to February 24, 2016 and that the Landlord had it towed on February 22, 2016. The Tenant states that he could not reach the Landlord and the neighbour told the Tenant that the van had been towed. The company that towed the vehicle also owns a junk yard. The Tenant states that he either went to or called the towing company 5 days later and was told "too bad for me". The Tenant states that he spoke with the police who informed him that the van had been stripped and taken to the junk yard.

The Landlord states that the agreement was for the van to be stored only to the end of February 2016 but that the Landlord left it until March 30, 2016 when it was towed away for disposal. The Landlord states that it cost no money to have the van towed. The Landlord states that the van is still at the junk yard. The Landlord states that she is not prepared to return the van or to pay for its return. The Landlord states that she informed the Tenant by phone on the day that it was towed and that the Tenant could have retrieved it then after paying the tow company. The Landlord states that she tried several times before the van was towed to have the Tenant remove the van but the Tenant consistently refused. The Landlord states that the tow company informed the Landlord that the Tenant had attended the junk yard and had retrieved his belongings that were inside. The Landlord thinks the van would be worth about \$200.00 but does not know the year of the van. The Landlord states that the van was unlicensed and did not run.

The Tenant states that the van was worth \$5,000.00 as the Tenant had been rebuilding the van and had had body work done for a cost of \$1,300.00. The Tenant states that he was just getting the van ready for painting. The Tenant states that he was waiting for the funds to licence the van in order to move it from the rental property. The Tenant states that he is most upset because this van was the only secure object that he had to store personal belongings. The Tenant states that when he went to the junk yard he

was told that the only items in the van were a panel box and a set of jumper cables. The Tenant states that the van had been placed on a pile of vehicles and that it had been stripped and the windows were broken. The Tenant states that his neighbour told him that it was towed prior to March 25, 2016. The Tenant states that he could not reach this neighbour to have him attend as a witness for this hearing.

The Tenant claims the return of the van. The Tenant states that no compensation was claimed as the Tenant was unsure how to do this.

Analysis

Section 24 of the Regulations provides that a landlord may remove abandoned property in accordance with the Regulations unless there is an express agreement to the contrary respecting the storage of the property. It is undisputed that there was an agreement for the Landlord to store the Tenant's van to at least the end of February 2016. I find therefore that the van could not be considered abandoned at least to this date.

Section 25 of the Regulations provides, in relation to abandoned property, that a landlord must, inter alia, store a tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal. This section also provides that the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

Although the Landlord feels that the van carries a value of only \$200.00, as the Landlord did not even know the year of the van I find that the Landlord's belief is not credible or reasonable. Given the Tenant's persuasive evidence of body work done to

the van I find that the van was worth more than \$500.00 at the time the Landlord removed it from the rental property. There is no evidence of any costs in relation to the removal and storage of the van or that the van could not be safely stored. Even if the van could be considered to be abandoned after the end of February 2016 and the Landlord did remove the van on March 30, 2016, given that the Landlord disposed of the van instead of storing the van for at least 60 days following its removal from the rental property I find that the Landlord breached the Act.

Section 65 of the Act provides that an order may be made that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned. Given the Landlord's evidence that the van is still in the possession of the towing company I order the Landlord to retrieve the van from the towing company and return the van to the Tenant no later than April 15, 2017. Should the Landlord fail to return the van, or fail to return the van in the same condition as it was at the time of removal the Tenant has leave to reapply for compensation. As the Tenant did not detail any claim for contents either in its application or in evidence I decline to make any finding or order in relation to contents.

Conclusion

I order the Landlord to return the Tenant's van to the Tenant no later than April 15, 2017. 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: March 31, 2017

Residential Tenancy Branch