



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0900738 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP

Introduction

This hearing took place in response to the Tenant's Application for Dispute Resolution (the "Application") for the return of his personal property.

The Tenant appeared for the hearing and provided affirmed testimony as well as photographic evidence prior to the hearing. There was no appearance for the Landlord during the 30 minute hearing but it appears that the Landlord did provide late email and documentary evidence prior to the hearing.

The Tenant testified that he served the Landlord with a copy of his Application and the Hearing Package by registered mail on June 5, 2017. The Tenant testified that according to the Canada Post website, the Landlord had received and signed for this on June 8, 2017. Therefore, I find the Tenant served the documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

The Tenant also explained that he had received from the Landlord an email two days prior to this hearing containing the Landlord's evidence, including the Landlord's request that the Landlord named in the Tenant's Application was incorrect. The Tenant confirmed that the person named in his Application was an agent of the company the Landlord was referencing in his evidence. The Tenant requested that his Application be amended to also add the company name. Therefore, in the absence of the Landlord, I amended the Tenant's Application pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Should the Landlord return the Tenant's personal property?

Background and Evidence

The Tenant testified that this tenancy with the previous landlord started on or around June 2013 for a bachelor suite on a month to month basis. Rent was payable by the Tenant in the amount of \$550.00 on the first day of each month. The most recent Landlord named in this Application took over this tenancy in December 2015 at which point the Tenant was served with a notice to end tenancy for the Landlord's use of the property, namely to demolish the rental unit.

The Tenant disputed the notice to end tenancy and a hearing was scheduled on March 9, 2016 to hear that matter. The file number for that hearing is detailed on the front page of this Decision. In that hearing, the parties instead agreed to mutually end the tenancy on June 15, 2016 and the Landlord was issued with an Order of Possession effective for this date.

The Tenant testified that he was rushed to leave the rental unit on June 15, 2016, and in that process he left behind a satchel which contained: a change of name form; his original birth certificate; and adoption papers. The Tenant also left behind a pair of precious metal bracelets on a shelf in the suite.

The Tenant testified that he contacted the Landlord on June 15, 2016 by email requesting the return of them but the Landlord explained that he had boarded up the rental unit pending the issuing of the permits by the city for the demolition.

The Tenant explained that he waited a few weeks and when he contacted the Landlord again, he was informed that they were too busy to access the rental unit to give him back his belongings. The Tenant stated that he was unable to get work because he did not have any of his identification and even offered the Landlord money to get access to the rental unit to retrieve his property.

The Tenant explained that in May 2017 he enlisted the help of an advocacy agency who contacted the Landlord for the return of his items. However, the Landlord started to demand \$300.00 for the return of the property.

The Tenant testified that his property is still sitting in the rental unit, which is yet to be demolished and the Landlord is refusing him the return of it.

Analysis

Section 44(1) (d) of the Act provides that a tenancy may end if a tenant vacates or abandons a rental unit. Sections 24(1) and (2) of the Residential Tenancy Regulation (the "Regulation") provides for the circumstances which allow a landlord to determine if the rental suite has been abandoned as follows:

- 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.*

[Reproduced as written]

I have analysed the Tenant's undisputed evidence, and I accept that the tenancy ended when the Tenant vacated the rental unit on June 15, 2016 pursuant to the mutual agreement that was entered into during the March 9, 2016 hearing. There is insufficient evidence before me to suggest that the Tenant abandoned the rental unit or his personal property. The Tenant sent an email to the Landlord on the same day requesting the return of the Tenant's documentation and his bracelets which is a clear indication that the Tenant did not abandon them.

Section 65(1) (d) of the Act allows an Arbitrator to order the return of personal property seized or received by the landlord contrary to the Act or tenancy agreement. I accept the Tenant's undisputed evidence that the Landlord is still in control and possession of the Tenant's personal property which I order must be returned back to the Tenant. I order the Landlord to return the Tenant's: change of name form; his original birth certificate; adoption papers; and the pair of metal bracelets on a shelf in the suite. The Landlord must return these to the Tenant by August 15, 2017. If the Landlord does not, the Tenant is at liberty to file a monetary claim against the Landlord for the costs incurred to obtain new documents and the replacement value of the bracelets. If the Tenant does file such a claim, the Tenant will bear the burden to prove the value of the losses incurred.

Conclusion

The Landlord is ordered to return the Tenant's personal property. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 21, 2017

Residential Tenancy Branch