



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL FF

Introduction:

Only the landlord attended the hearing and gave sworn testimony. The Two Month Notice to End Tenancy for landlord's use of the property is dated August 23, 2017 to be effective October 31, 2017 and the landlord said he served it by posting it on the door and by registered mail also. He said the Application for Dispute Resolution was served by registered mail (receipt provided). I find the documents were legally served for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55;

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and they are entitled to an Order of Possession?

Background and Evidence

Only the landlord attended the hearing although the tenant was served Notice of the Hearing. The landlord was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 1, 2016, rent was \$1050 a month and a security deposit of \$525 was paid. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

- a) The landlord requires the property for their own use for occupancy by the landlord or the landlord's spouse or close family member (father, mother or child) of the landlord or the landlord's spouse.

The landlord said they no longer require an Order of Possession as the tenant vacated on September 27, 2017 and paid no rent for September or October. He said the problem is she left a lot of junk behind, much of which is left outdoors. He wonders what to do with it.

Included with the evidence are photographs showing many items left outdoors and indoors. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The onus is on the landlord to prove on a balance of probabilities that they have need of the unit for their own use. I find the landlord's evidence credible that they require the whole home for the use of themselves, their children and guests. However, the landlord no longer requests an Order of Possession as the tenant has vacated.

In respect to the items left behind by the tenant, I referred the landlord to Residential Tenancy Regulation Part 5 which provides as follows:

Part 5 — Abandonment of Personal Property
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.

Landlord's obligations

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), 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.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Tenant's claim for abandoned property

26 (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [disposal of personal property], the landlord may, before returning the property, require the tenant to

(a) reimburse the landlord for his or her reasonable costs of

(i) removing and storing the property, and

(ii) a search required to comply with section 27 [notice of disposition], and

(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

The landlord who is a new Canadian requested that some direction in dealing with the property be provided to him. Therefore, I have quoted the relevant sections above for his easy reference. Furthermore, the landlord's testimony and photographs demonstrate that the property left behind may be worth less than \$500 in which case, section 25(2) highlighted above may be applicable. To protect his interests, I suggest the landlord might get an estimate of the value of the property from a shop that sells used items. He also might ask the local Bylaw Officer to indicate what items should be removed for sanitary or safety reasons.

Conclusion:

The landlord no longer requires an Order of Possession. He did not request recovery of unpaid rent or the filing fee on his application so it is not awarded. The tenant is entitled to one month free rent pursuant to the section 49 Notice to End Tenancy. I give him leave to reapply for damages and other unpaid rent if necessary.

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: October 10, 2017

Residential Tenancy Branch