



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "*Act*"), made on January 13, 2019. The Tenant applied for an Order that the Landlord return the Tenant's personal property as well as the return of the filing fee.

The Tenant's Agent C.J. as well as the Landlords attended the hearing, each providing a solemn affirmation at the beginning of the hearing.

C.J. testified that the Tenant served the Landlords with the Application and documentary evidence package on January 17, 2019 via registered mail. The Landlords acknowledged receipt.

The Landlords stated that they served the Tenant with their documentary evidence on February 10, 2019 via registered mail to the Tenant's address for service which was listed on the Application. The Landlords provided the Canada Post tracking number in support. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. C.J. stated that she did not receive the Landlord's evidence, however, did admit that she did not provide her own address for service. C.J. also indicated that the Tenant did not provide her with the evidence package. I find the above documents were sufficiently served to the Tenant's address for service for the purposes of the *Act*.

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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order for the Landlords to return the Tenant's personal property, pursuant to Section 65 of the *Act*?
2. Is the Tenant entitled to the return of their filling fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on August 1, 2017 and ended on July 31, 2018. During the tenancy, rent in the amount of \$1,200.00 was due to the Landlords on the first day of each month. A security deposit in the amount of \$600.00 was paid to the Landlords.

C.J. testified she shared the rental unit with the Tenant during the tenancy. C.J. stated that the Tenant is seeking the return of their personal property in relation to some missing clothing items that belonged to C.J.

C.J. testified that the Landlords had contacted the Tenant stating that they intended on removing some of the Landlords' possessions from the basement of the rental unit. C.J. stated that there were various items in the basement, some of which belonged to her and the Tenant. C.J. testified that the Landlords had finished clearing the basement on July 31, 2018. C.J. stated that she returned home on August 2, 2018 at which point she noticed that several of her and the Tenant's possessions were missing, and some had been disposed of in the garbage. The Tenant provided a list of clothing items that were missing in support.

In response, the Landlords testified that they attended the rental unit on July 31, 2018 at which point they confirmed with the Tenant that they would remove the Landlords' possessions from the basement. The Landlords stated that the Tenant indicated to them that there were items in the basement which belonged to a previous female tenant. The Landlords testified that while they were removing the Landlords' possessions, they came across some clothing and makeup that they assumed belonged to the previous female Tenant. The Landlords stated that they were unaware that the Tenant had C.J. as a roommate.

The Landlords testified that they removed the clothing from the crawlspace and brought it to a Thrift Store where the items were donated. The Landlords stated that they found out about the items belonging to C.J. on August 3, 2018. On that date, the Landlords returned to the Thrift Store to try and retrieve the clothing items, however, were unsuccessful. The Landlords confirmed that the clothing items are gone and they are unable to return them to the Tenant.

Analysis

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

According to Section 65(1)(e) if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make an order that personal property seized or received by a landlord contrary to this *Act* or a tenancy agreement must be returned.

I accept that the parties agreed that the Tenant's personal property was removed from the rental unit without the Tenant's permission. I further accept that the items taken by the Landlords have been disposed of and are no longer recoverable. As a result, I am unable to order the Landlords return the Tenant's personal possession.

In light of the above, the Tenant may wish to seek a remedy under the *Act* for compensation in relation to the missing items, within any limitations set forth in the *Act*.

I find that the Tenant is entitled to recover the filing fee in the amount of \$100.00 pursuant to Section 72 of the *Act*.

Conclusion

The Tenant is granted a monetary order in the amount of \$100.00. This order must be served on the Landlords as soon as possible. If the Landlords fail to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 4, 2019

Residential Tenancy Branch