



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, FFT

Introduction

In this dispute, the tenant seeks the return of her personal property from the landlord, pursuant to section 65 of the *Residential Tenancy Act* (the “Act”), and, compensation for the cost of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on May 8, 2019 and a dispute resolution hearing was held on June 18, 2019. The parties, along with an assistant for the landlord and two witnesses for the tenant attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any substantive issues with respect to service.

I reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Is the tenant entitled to the return of her personal property?
2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

A \$1,700 Daymak electric scooter and a \$1,000 Android tablet are at the centre of this dispute. The tenant claims that the landlord has seized the scooter and tablet (the “personal property”) and refuses to give it back. The landlord claims that the tenant owes him unpaid rent, hydro, and miscellaneous other costs, and that he will not return the personal property until she pays him what is owed.

By way of background, the tenant moved into the rental unit (along with several other people) on September 1, 2018 and moved out on March 20, 2019. Monthly rent was \$500.00, later lowered to \$480.00 on account of more occupants. There was a security deposit of \$1,000.00, which the roommates split accordingly. No copy of a written tenancy agreement was submitted into evidence.

Shortly after moving out, the tenant found out that the landlord had in his possession her personal property. The scooter was allegedly in storage, and the tablet was likewise in the landlord's possession, after the tenant's ex-boyfriend handed it over to the landlord. No photograph of the scooter was submitted into evidence, but the tenant submitted a photo of a young gentleman taking a mirror selfie with the tablet (along with two big bongos on the counter). The landlord did not dispute that the personal property belongs to the tenant.

The tenant attended to the landlord's residence on March 22, 2019 in an effort to retrieve her personal property. The landlord made it clear that she was not going to get any of her personal property back until he paid her what he believed she owed.

The tenant's assistant submitted that the landlord admits to holding the personal property and is doing so because the tenant owes unpaid rent, unpaid hydro, and various other costs related to cleaning the rental unit. He estimates that the tenant owes about \$1,500.00, but that he is willing to negotiate some sort of a payment plan with the tenant. That said, the landlord's position was best summarized by the assistant as "until this is done, there is no handover." In her final submission the tenant exclaimed that "I do not owe him anything!"

In response to a few questions that I had regarding the unpaid amounts, the assistant commented that the landlord has not, due to his elder age and busy schedule of cleaning the rental unit, filed an application for dispute resolution seeking compensation against the tenant. Finally, I note that the landlord did not dispute the tenant's submissions regarding the value of the scooter at \$1,700.00 and the value of the tablet at \$1,000.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act sets out the law on the payment of rent. It also addresses the issue of whether and when a landlord may seize a tenant's personal property.

Subsections 26(3) and (4) state the following:

- (3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not
 - (a) seize any personal property of the tenant, or
 - (b) prevent or interfere with the tenant's access to the tenant's personal property.
- (4) Subsection (3) (a) does not apply if
 - (a) the landlord has a court order authorizing the action, or
 - (c) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, there is no evidence that the landlord has a court order authorizing the seizure of the personal property, and no evidence that the tenant abandoned the rental unit. The landlord does not dispute that he has seized the personal property. And, while the tenant may owe the landlord arrears for rent, hydro, and other matters (I make no finding as to whether such amounts are owed), I find that the landlord has no legal right to seize the tenant's personal property.

Section 65(1) and subsection 65(1)(e) of the Act authorizes an arbitrator to make an order "that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned."

Having found that the landlord does not have a right under the Act to seize the tenant's personal property and is in breach of section 26(3) of the Act, I order that the landlord must return the tenant's personal property, pursuant to subsection 65(1)(e) of the Act.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was successful I grant her claim for reimbursement of the filing fee in the amount of \$100.00.

A monetary order in this amount is issued in conjunction with this Decision, to the tenant.

If the landlord believes that the tenant owes him unpaid rent, unpaid hydro, and other costs, he is at liberty to apply for dispute resolution against the tenant for compensation within two years of the date of the tenancy ending.

Conclusion

IT IS ORDERED AND DIRECTED THAT:

The landlord must return the personal property to the tenant, at the tenant's location of choosing, no later than June 26, 2019.

The personal property must be returned in the same condition as it was when the landlord seized the personal property.

This order may be filed in, and enforced as an order of, the Provincial Court of British Columbia, pursuant to section 85(1)(a) of the Act.

This decision and order are final and binding and is made on authority delegated to me pursuant to section 9.1 of the Act.

Dated: June 18, 2019

Residential Tenancy Branch