



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RPP, MNDCT

Introduction

This hearing was set to deal with a tenant's application for orders for the landlord to return the tenant's personal property; orders for the landlord to comply with the Act, regulations or tenancy agreement; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the parties had exchanged their respective hearing documents and evidence upon each other and I have considered their documents and evidence in making this decision.

I requested the tenant clarify the orders for compliance she was seeking from the landlord. The tenant stated that she is looking for the return of her personal possessions. Since this remedy was already captured under another section of the tenant's application, I did not consider the tenant's request for orders for compliance any further.

It should be noted that the landlord had another tenant of the residential property appear as a witness at the commencement of the hearing. Since this person was identified as being a witness by the landlord, I excluded her from the proceeding until called to testify. The witness, whom the tenant considered to be a caretaker of the property and her niece, was called to testify and was subject to examination and cross examination.

Issue(s) to be Decided

1. Is it necessary and appropriate to issue an order to the landlord for the return of the tenant's personal property?
2. Has the tenant established an entitlement to the monetary compensation she seeks from the landlord?

Background and Evidence

I was provided consistent testimony that an oral tenancy agreement formed in early January 2019 and the landlord signed an "Intent to Rent" forms for the tenant and a separate "Intent to Rent" form for the tenant's son so that two payments of \$375.00 would be provided directly to the landlord by the government on behalf of the named tenant and her son. The balance of \$1,200.00 rent obligation was provided by a First Nations organization by way of a cheque issued to the landlord and delivered to the landlord by the tenant.

The parties completed the "Intent to Rent" forms indicating the monthly rent was \$1,200.00; however, the landlord stated the rent was actually \$1,100.00 and he would return \$100.00 to the tenant. The landlord collected security deposits on behalf of the tenant and her son in the sum of \$600.00.

I was provided consistent testimony from the tenant and the landlord that the tenant was last seen at the residential property in early May 2019 and rent had been paid in full for the month of May 2019.

Tenant's submission

Below, I have summarized the tenant's submission.

The tenant left the property on May 5, 2019 to go to a nearby city. While in the nearby city, on May 7, 2019, the tenant received a telephone call from a person identified by initials NA. The tenant described NA as being the caretaker who resides in another unit on the property and the spouse of the landlord's witness. According to the tenant NA told the tenant her possessions had been removed from the rental unit and were being stored in the garage but to never return to the property. The tenant considered this to be an illegal eviction.

After receiving the telephone call on May 7, 2019 the tenant never returned to the property. The tenant testified that she did not know what to do initially and went to see an Advocate on June 4, 2019. When I asked the tenant to explain why she waited nearly a month to see an Advocate the tenant responded that she was in the hospital from May 25, 2019 until June 5, 2019.

The tenant also stated that she telephoned the landlord prior to going into the hospital and when I asked the tenant to describe what he said to her, the tenant stated she could not recall and that she had difficulty remembering a lot of things especially since she was under a lot of stress.

The Advocate stated she tried telephoning the landlord six times before filing this Application and got no answer.

The tenant prepared a list of personal property that she submits were disposed of by the landlord. The value of the items listed is in excess of several thousand dollars. The tenant also requested recovery of costs incurred after May 7, 2019 and aggravated damages.

Landlord's submission

Below I have summarized the landlord's submissions.

The landlord submitted that on May 1, 2019 or May 2, 2019 he spoke with the tenant on the telephone to retrieve the last portion of the rent due for May 2019. According to the landlord, the tenant told him that she was no longer living at the rental unit but that she would meet him to give him the rent. Shortly afterward, the landlord received a telephone call from the police asking that he meet the tenant in front of a department store because she did not want to return to the rental unit because her son and his friends were there. The landlord met the tenant at the department store where he collected the last portion of the rent payment from the tenant. The tenant requested the landlord change the locks to the rental unit in an effort to prevent her son from entering the rental unit, which the landlord did that same day.

The following day the landlord returned to the property and found the tenant in the unit with her son. When the landlord asked the tenant how the tenant's son entered the rental unit he heard the son came in through the attic.

Between the dates of May 2, 2019 and May 7, 2019 the landlord was receiving telephone calls from neighbours, by-law officers and the police concerning disturbing and criminal activity taking place at the rental unit.

On May 7, 2019 the landlord's witness informed the landlord that a whole bunch of people, other than the tenant, were residing in the rental unit. The landlord went to the property and several people told the landlord they had paid rent to the tenant. The landlord informed the people occupying the house, including the tenant's son, that he would be calling the police. In response, the occupants started taking property out of the house and the tenant's son held a garage sale over three days. The tenant's son also took much of the personal property to another address nearby and proceeded to sell it to people on the street.

According to the landlord, he asked the tenant's son whether the property he was selling was his or his mother's and the tenant's son responded that the tenant had taken her possession and what remained was his property.

The property that was not taken or sold was then taken out of the rental unit and put in the garage because the rental unit continued to be broken into. The landlord testified that there is still an old kitchen table and a stained mattress and box spring in the garage that the tenant can come get. The tenant stated she did not want that property.

The landlord stated that he considered the tenant to have abandoned the property as of May 7, 2019 when he went to the property and determined the tenant was not there and the people occupying the rental unit said they had paid rent to the tenant.

Witness (caretaker) testimony

The landlord's witness was called to testify. Below, I have summarized her testimony.

The witness, who helps manage the property and is also the tenant's niece, testified that she last saw the tenant at the property on April 28, 2019 and on that date the tenant appeared "tipsy" and stated she was returning to the women's shelter and she had a suitcase with her. The tenant's son and others remained in the rental unit.

The witness stated that her spouse, NA, would not have called the tenant.

The witness helped the tenant's son remove items from the rental unit on or about May 8, 2019 and the tenant's son indicated to her that the possessions were his.

The witness stated that the tenant left the property on a number of occasions during the tenancy and in doing so the tenant would tell her she was giving her possessions to either her son or the witness. The witness had seen physical abuse by the tenant's son toward the tenant and the tenant expressed fear of her son throughout the tenancy.

The tenant asked the witness whether she recalled a conversation on May 5, 2019 whereby the tenant indicated that she wanted her nephew to move in with her. The witness recalled the conversation but stated it took place in mid-April 2019.

The tenant asked whether the witness had any of her personal possessions in her unit. The witness confirmed that she has the tenant's bed and curtains in her unit and the tenant is free to come get them. I informed the parties that I would issue an order so that the tenant may retrieve her bed and curtains from the witness, the landlord's caretaker, and that I would set a deadline of July 31, 2019. There were no objections to the deadline set.

Absence of tenant's son

I noted that the tenant's son, whom I considered to be a tenant as well, was not present at the hearing and did not provide any written statement despite being the last tenant to occupy the rental unit. I asked the tenant or her Advocate whether the tenant's son could provide evidence. The Advocate's response was that they tried to get the tenant's son to participate in this proceeding but that he was "unavailable".

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

I consider the tenant's son to be a tenant of the rental unit considering the landlord signed an "Intent to Rent" form indicating the tenant's son was a tenant and the landlord was receiving rent on behalf of the tenant's son. Accordingly, I find the tenant's son had the legal right to have possession of the rental unit in addition to the named tenant.

A tenancy ends in one of the ways provided in section 44 of the Act. In this case, I did not hear that the tenant(s) or the landlord gave the other party a notice to end tenancy. A tenancy cannot be ended by way of the caretaker telling the tenant not to return to the

property if in fact that statement was made. As such, the tenant retained the right to return to the property throughout May 2019 yet she did not return to the property.

A tenancy does end when a tenant vacates or abandons a rental unit. I reject the landlord's submission that the rental unit was abandoned by the tenant on May 7, 2019 since one of the co-tenants was still in possession of the rental unit on that date. However, I heard from the landlord and the witness that the tenant's son, the co-tenant proceeded to remove most of the possessions from the property starting on May 8, 2019.

Having heard rent was not paid for June 2019 and the co-tenants had left the property in May 2019 I consider the property to have been abandoned by the co-tenants in May 2019 although the exact date is unknown and the tenancy ended in May 2019.

When a tenant leaves personal property at a rental unit after the tenancy ends the landlord must handle the tenant's personal property in accordance with the abandoned property provisions in the Residential Tenancy Regulations. Section 25 provides the landlord's obligations with respect to handling of abandoned property.

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).

The landlord acknowledged that some personal property was left at the property after the tenant's son and other occupants removed personal property from the rental unit but that the only things that remain are the tenant's bed and curtains which the caretaker is holding for the tenant and an old kitchen table and stained mattress and box spring that are still in the garage. Although the tenant provided a list of items she claims were lost at the hands of the landlord, I find the tenant's list is unreliable for the following reasons.

The tenant's son, a co-tenant, was still in possession of the rental unit after the tenant left the property for the last time; I heard the tenant's son took and sold most of the items left behind by the tenant; and, and the tenant did not return to the property to ascertain what was left despite her testimony that she was informed that her possessions were in the garage. Nor, did the tenant have her son, the last co-tenant at the property, provide any evidence to demonstrate what items were still at the property when he left or refute the landlord's version of events.

The tenant had testified that the caretaker NA told her not to return to the property; however, I find that statement is inconsistent with telling the tenant that her possessions are being stored in the garage. The tenant acknowledged that she had difficulty remembering events and I noted that her recollection of dates was not consistent. For instance, the tenant testified that she was in the hospital until June 5, 2019 yet she also testified that she went to see an Advocate on June 4, 2019. The tenant also testified that NA telephoned her while she was in the nearby city yet on the list of lost possessions the tenant prepared indicates she left her cell phone at the rental unit. Accordingly, I find the tenant's recollection to be not overly reliable.

Also of consideration is that the tenant's list of lost possessions included personal items such as dentures, eye glasses and cell phone and I would expect that a person leaving home for at least a couple of days, as she did, one would take their dentures, eye glasses and cell phone with them.

I note that on the tenant's list of lost possessions is a cell phone belonging to her son yet the tenant's son did not participate in this proceeding and it is unclear how the tenant determined her son's cell phone was improperly disposed of by the landlord.

The tenant's advocate took issue with the landlord permitting the tenant's son to remove and sell possessions; however, where there are co-tenants renting a unit a landlord is

not required under the Act to scrutinize the removal of possessions by one of the co-tenants and determine which co-tenant owns the item. If a co-tenant takes a possession that belongs to the other co-tenant then the dispute is between the co-tenants and they are at liberty to resolve their dispute in the appropriate forum.

In light of all of the above, I find the tenant's version of events is unreliable and the tenant did not persuade me that the landlord evicted her or that the landlord has or disposed of the items the tenant listed in this application and I proceed to deal with the possessions the landlord, including the caretaker, do have in their possession.

The tenant stated she does not want the old kitchen table and stained mattress and box spring that are still in the garage of the rental unit and I authorize the landlord to dispose of those items.

The caretaker is holding the tenant's bed and curtains and **I order the landlord to ensure that the tenant may have access and remove her bed and curtains from the caretaker's unit until July 31, 2019.**

Having found the tenant did not establish that the landlord unlawfully evicted her and is holding other possessions belonging to the tenant or that the landlord improperly disposed of the tenant's possessions I dismiss the balance of the tenant's application without leave.

Conclusion

I have issued an order that the landlord ensure the tenant has access to her bed and curtains that are currently stored by the landlord's caretaker up until July 31, 2019.

The landlord is authorized to dispose of the kitchen table and mattress and box spring in the garage of the rental unit.

The balance of the tenant's application is dismissed without leave.

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: July 10, 2019

Residential Tenancy Branch