



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- an order requiring the landlords to return the tenant's personal property, pursuant to section 65.

The "male landlord" did not attend this hearing, which lasted approximately 67 minutes. The female landlord ("landlord"), the landlords' agent, the landlord's English language interpreter, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she had permission to represent the male landlord at this hearing (collectively "landlords"). The landlord stated that the landlords' agent had permission to represent both landlords, but he did not testify at this hearing. The landlord confirmed that her interpreter had permission to speak on her behalf. The tenant intended to call a witness regarding service of her evidence package but I found that it was not necessary to do so, as the landlord agreed that she received the tenant's evidence package, as noted below.

The hearing began at 11:00 a.m. with me, the landlord, the landlords' agent and the landlord's interpreter present. The tenant called in late at 11:02 a.m., stating that her clock was wrong and that she tried a few times to call in. I notified the tenant about what occurred in her absence before she called in. The hearing ended at 12:07 p.m.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. The

landlord confirmed that she received an evidence package from the tenant but she chose not to open or review it. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and deemed served with the tenant's evidence package, despite the fact that they chose not to review or open it. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' evidence package.

During the hearing, the tenant confirmed that her application for an order for the landlords to comply with the *Act*, *Regulation* or tenancy agreement, related to a determination as to the date the tenancy ended and whether the Residential Tenancy Branch ("RTB") had jurisdiction to hear this matter. The jurisdictional question is decided below. The circumstances relating to the end of the tenancy are described below. An order to comply relates to an ongoing tenancy and since both parties agreed that this tenancy has ended, the tenant's application for an order to comply is dismissed without leave to reapply.

Preliminary Issue – Jurisdiction to hear Application

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

*4 This Act does not apply to
(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation...*

The tenant raised the issue of jurisdiction at the outset of the hearing. The tenant submitted that I did not have jurisdiction under the *Act* to hear her application because it was excluded by section 4(c) of the *Act*, since the tenant shared kitchen and bathroom facilities during the tenancy, with the male landlord owner of the rental unit. She stated that she shared a kitchen with the male landlord throughout her entire tenancy and that she shared the bathroom with the male landlord sporadically. The tenant maintained that since the stove, oven, dishwasher and refrigerator were included in her monthly rent, as per section 3 of the parties' written tenancy agreement, these appliances were in a common area, not within the tenant's room with a locked door.

Both parties agreed that they attended a previous hearing on December 17, 2018, where a decision of the same date was issued by a different Arbitrator, the file number of which appears on the front page of this decision. That hearing was regarding the tenant's application to dispute notices to end tenancy and for ongoing tenancy orders.

The tenant agreed that the previous Arbitrator made a decision to accept jurisdiction over the tenant's application, dismissing the tenant's allegations that the parties shared a kitchen and bathroom. The tenant said that she did not attend that full hearing, only the beginning, and that she did not get to make full submissions because she had to leave the hearing. She explained that she filed a review of that decision, for fraud and being unable to attend the hearing, which was dismissed by the reviewing Arbitrator in a decision, dated January 3, 2019.

The tenant claimed that she filed a judicial review petition in Court, for the previous decision, but that she did not know the issues because she had not yet particularized them. She maintained that she filed this current application for this hearing, rather than in the Court, because she was waiting for the outcome of judicial review. The tenant maintained that despite the previous RTB decision and review, this matter was not within the RTB's jurisdiction.

The landlord confirmed that the male landlord is the owner of the rental unit. She said that the male landlord did not live at the rental unit, nor did he share the kitchen or bathroom with the tenant during her tenancy. The landlord made these same submissions at the previous RTB hearing in December 2018.

I find that it is undisputed that the male landlord owns the rental unit. The tenant raised the jurisdictional issue at this hearing and has the burden to prove this claim, as it was disputed by the landlords. I find that the tenant failed to provide sufficient independent documentary or witness evidence to show that she shared the same kitchen or bathroom with the male landlord owner.

I do not accept the tenant's submission that because the stove, oven, dishwasher and refrigerator were included in her rent and located in a common area outside her room, implied that they were shared with the male landlord owner. I accept and prefer the landlord's testimony that the male landlord did not live at the rental unit and did not share the same kitchen or bathroom with the tenant. Further, the male landlord owner provided a different address on the parties' written tenancy agreement.

Moreover, both parties have a previous RTB decision from December 17, 2018 made by a different Arbitrator, accepting jurisdiction because the tenant failed to prove that she shared a kitchen or bathroom with the male landlord owner. The tenant's review of that decision was dismissed on January 3, 2019, by a different Arbitrator. The tenant

again filed another application at the RTB for this current hearing, despite her claim that the RTB did not have jurisdiction to hear matters regarding this tenancy.

Accordingly, I find that I have jurisdiction to consider the tenant's application because it is not excluded by section 4(c) of the Act.

Preliminary Issue – Adjournment of Hearing

During the hearing, the tenant requested an adjournment twice. She did not make these requests at the outset of the hearing. First, she claimed that she needed to find a witness to prove her jurisdiction claim. Second, she claimed that she wanted the landlords to pay for someone to help her sort through her boxes to see what items were missing, in order to substantiate her return of personal property claim.

The landlords opposed the tenant's adjournment request. The landlord stated that the tenant had more than ample time to prepare for this hearing and obtain evidence and witnesses. She claimed that she was ready to proceed with the hearing, had submitted evidence, and wanted closure to the matter. She said that she had spent more than enough time on the tenant's application, including the previous hearing in December 2018.

During the hearing, I advised both parties that I was not granting an adjournment of the tenant's application. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

After the hearing had begun and after hearing numerous submissions by both parties, the tenant claimed that she required an adjournment to obtain a witness to prove her jurisdiction claim, stating that she did not know that one would be necessary for this

hearing. However, the tenant raised the same jurisdictional issue at the previous hearing on December 17, 2018, almost seven months prior, and the Arbitrator noted in her decision that the tenant was required to prove her claim and that because she failed to do so, the Arbitrator accepted the landlords' evidence and accepted jurisdiction over the matter. The tenant had ample notice and time to produce her evidence and witness regarding jurisdiction, and failed to do so.

The tenant filed this current application on May 27, 2019, almost 1.5 months before this hearing on July 8, 2019. I find that she had ample time to produce her evidence and witnesses for the hearing. I find that the tenant filed her application on her own accord, as no one required her to do so. The tenant submitted a voluminous amount of evidence and had a fair opportunity to present her application evidence and respond to the landlords' evidence. I find that a further delay in the hearing date would prejudice the landlords, who were ready to proceed, produced evidence, and opposed the tenant's adjournment request.

Preliminary Issue – Withdrawal of Application

At the end of the hearing, the tenant asked to "revoke" and withdraw her claim and file it at a later time. The landlords opposed this request.

I notified both parties that I would not allow the tenant to withdraw her claim. The tenant made this request after 67 minutes of hearing time, after she had presented her claim for the return of her personal property, as well as her jurisdiction argument and adjournment requests. The tenant had a full opportunity to present her claim and evidence prior to and at the hearing. The tenant also had an opportunity to withdraw her claim prior to the hearing and to seek the landlords' consent.

The landlords were prepared for the hearing, submitted documentary evidence, and made submissions in response to the tenant's claim. I find that allowing the tenant to withdraw her claim and gather more evidence and witnesses, when she had ample time to do so prior to the hearing, would significantly prejudice the landlords who wanted closure to this matter.

Further, the tenant chose to file this application of her own accord, at the time that she chose. The tenant did not file this application in response to any ongoing urgent tenancy issues, such as a notice to end tenancy.

After I denied the tenant's adjournment requests and withdrawal request, she stated that she could file a review of my decision. I notified her that she could pursue her legal rights to file a review after the hearing, if she wished to do so.

Issue to be Decided

Is the tenant entitled to an order requiring the landlords to return the tenant's personal property?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on November 1, 2016. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. Both parties signed a written tenancy agreement.

The landlord said that the tenancy ended on January 22, 2019, when the bailiff removed the tenant and her possessions from the rental unit. The tenant stated that her tenancy ended on April 30, 2019.

The tenant seeks the return of an area rug carpet, that was left in the mud, outside the landlords' garage door at the rental property. She claimed that she also wanted the return of one piece of paper, which was part of a legal document, that was stuck under the garage door. The tenant also asked for the return of various items in the garage, including papers and \$20.00 worth of empty bottles. She said that there were other items in the garage but she could not open it and she did not know what else was inside.

The tenant said that she had to sort through the boxes currently in her possession, to see what else was missing and that she wanted the landlord to pay for someone to help her sort through her boxes. The tenant maintained that the landlord hired bailiffs as servants and that she provided case law with respect to this matter. The tenant did not review the case or cite the relevance or importance of the case during the hearing.

The landlord claimed that she did not move the tenant's belongings from the rental unit, as the bailiffs did so, when they removed the tenant from the rental unit. The landlords provided a copy of a signed writ of possession, dated January 9, 2019, from the Supreme Court of British Columbia ("SCBC"), which indicates it was enforced on January 22, 2019. The landlord said that she was not responsible for the tenant's personal property because she did not touch any of her items. She claimed that the tenant changed the locks and the bailiffs were required to remove the locks. The landlord explained that the tenant had ample time to go through her boxes and find out what was missing. She stated that she was not agreeable to paying for someone to help the tenant sort through her boxes.

Analysis

Section 65(1)(e) of the *Act*, states the following with respect to the return of personal property:

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], 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 any of the following orders:

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

The landlords provided documentary proof that a writ of possession from the SCBC was enforced against the tenant on January 22, 2019. The writ indicates that the bailiff was required to deliver vacant possession of the rental unit to both landlords, from the tenant. The writ further indicates that the bailiff is "commanded promptly to seize and sell at public auction or tender for the best price available sufficient of the goods and chattels of [tenant's name] to realize the claimant's costs, fees and expenses of execution and the costs, fees and expenses for executing this writ."

I accept the landlord's testimony that the landlords did not touch or remove the tenant's personal property from the rental unit. I accept the landlord's testimony that bailiffs removed the tenant and her personal property from the rental unit on January 22, 2019, pursuant to a writ of possession from the SCBC.

I find that the landlords did not seize or receive the tenant's personal property at all, whether contrary to the *Act* or the tenancy agreement. I find that the landlords do not have possession of the tenant's personal property and therefore, there is nothing to

return. Accordingly, I dismiss the tenant's application for an order requiring the landlords to return the tenant's personal property, without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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