



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, FF

Introduction

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

- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's agent, K.H. (the landlord) attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package in person on March 5, 2020. The tenant stated that the first documentary evidence package of a 4 page list of personal items was served to the landlord in person on March 6, 2020 with a witness. The landlord disputes this claim stating that no documentary evidence was served by the tenant. The tenant was unable to contact or provide her witness as proof of service for the documentary evidence. The tenant stated that the second documentary evidence submission, a photograph of a vehicle registration was not served to the landlord. Both parties confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on April 16, 2020, however, the Residential Tenancy Branch File shows no documentary evidence from the landlord. The landlord stated that the documentary evidence was submitted via facsimile. The landlord was advised that the Residential Tenancy Branch no longer accepts evidence submissions via facsimile. However, as the tenant has confirmed receipt of the package, I find that the tenant is deemed served. Both parties were advised that although the Residential Tenancy Branch did not have any record of this submission, the landlord may reference these documents during the hearing and if there was an issue a finding would be made on a case by case situation during the hearing. Neither party raised any other issues.

I accept the affirmed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package as confirmed by both parties. On the tenant's first submission of evidence, I find that without any supporting evidence and the landlord's submission that no documentary evidence was served, the tenant's March 6, 2020 submission is excluded from consideration in this decision. On the tenant's second documentary evidence submission, I find based on the tenant's direct testimony that it was not served was sufficient to find that this document be excluded from consideration from this decision.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to return the tenant's personal property?

Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks an order for the landlord to return her personal property. The tenant provided written details which states,

I am requesting my personell property back from landlord as he said to my brother tom that if we pay December and January rent that he would release my property back when my brother did this the management company said it would have to go to me personally but when I went to get my personnel property they said they threw it out or that they didn't have it so this is why I am asking for a resolution threw residential tenancy.

[reproduced as written]

During the hearing the tenant confirmed that when she had filed for dispute the landlord was in possession of the personal property, but when she went to collect it, the tenant had been informed that the landlord was no longer in possession of her property. The landlord confirmed during the hearing that the landlord is not in possession of the tenant's personal property.

Analysis

Section 65 (1) (e) of the Act states in part that if a landlord is found to have not complied with the Act, Regulations or Tenancy Agreement an order may be made that the personal property seized or received by a landlord must be returned.

In this case, both parties confirmed that the landlord was not in possession of the tenant's personal property as of the date of this hearing. On this basis, the tenant's application for an order to return personal property is no longer required.

Conclusion

The tenant's application is dismissed.

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: April 30, 2020

Residential Tenancy Branch