



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP

Introduction

This hearing was scheduled to convene at 9:30 a.m. on October 7, 2021 by way of conference call concerning an application made by the tenant seeking an order that the landlord return the tenant's personal property.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

The tenant testified that the landlord was served with the application, notice of this hearing and all evidence by registered mail on July 20, 2021. The tenant has provided a Canada Post tracking document indicating that the documents were sent on July 20, 2021 and delivered to the landlord on July 22, 2021. The landlord has provided evidentiary material, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Since no one has attended the hearing for the landlord, I cannot consider any of the evidence provided by the landlord. All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that the landlord should be ordered to return the tenant's personal property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on November 15, 2014. Rent in the amount of \$450.00 was originally payable on the 1st day of each month, and the tenant paid half a month's rent for the first partial month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$225.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a cabin on the landlord's property. There is no written tenancy agreement.

In about 2018 the landlord's daughter told the tenant that they understood that the tenant had problems, so the monthly rent was reduced by \$50.00, which was to be taken from the security deposit.

The tenant further testified that at the beginning of February, 2021 the tenant became severely ill rendering her unconscious for 3 days. The tenant's daughter, who does not reside in the province called a friend to check on the tenant because the tenant's daughter had not heard from the tenant for 3 days. The friend went to the rental unit but no one answered the door. The tenant's daughter knew that the landlord lived on the property and the friend asked the landlord to open the door, but the landlord could not find any keys. The tenant was told that the police attended and kicked the door down. The tenant was inside unconscious and was taken to hospital by ambulance on February 3, 2021. The tenant has provided a copy of a note from a physician confirming that the tenant was in hospital from February 3 to March 5, 2021. The tenant was then in a woman's shelter for another 3 months.

The tenant did not abandon the rental unit, and the landlord did not serve a notice to end the tenancy; the tenant doubts that the landlord could evict the tenant during the COVID-19 Pandemic.

When the tenant got out of the hospital, she didn't go to the rental unit, but her daughter was there and paid \$500.00 rent to the landlord, and some of the tenant's belongings were outside. A copy of the e-transfer in that amount has also been provided for this hearing dated February 17, 2021 which brought the arrears of rent up-to-date to February 15, 2021. The landlord said that if the rest of the belongings were not removed, the landlord would take it to the dump. A friend arrived the following week and picked up what was left outside. During that time, 1 of the tenants on the property told the tenant that her belongings outside were not secured and witnessed another tenant with a flashlight taking some items.

The tenant has provided lists of items not returned to the tenant. The first list is contained in an email string between the tenant and the landlord:

- 2 tool boxes
- household cleaning supplies (on top of hot water tank)
- brooms and mops
- blood pressure monitor
- make up and make up mirror
- antique table, chair and stool
- tv tables
- printer & cables
- vacuum
- food processor and blender
- 20 years of children's pictures and albums
- cremation ashes of dogs and cat
- taped box with legal on it
- jewellery box
- 2 slow cookers
- 2 cast iron frying pans
- dry food, canned food, spices
- Metal bed frame
- Clothes line
- Yard tools (rakes, snow shovels etc.)
- Fans
- Extension cords (blue and orange, no damage on them)
- Bookcase
- Vcr/dvd player

The tenant's email is dated May 24, 2021 and states that the tenant will attend that week to pick up the rest of her belongings. The reply from the landlord states that the unit was contaminated, and the landlord can only guess where the stuff went.

The tenant has also provided another list of items as evidence for this hearing on August 6, 2021:

- 100-year-old shaker style dining room table with slide-outs made of oak with veneer inlay on top
- HP all-in-one printer

- Blood pressure machine
- Convection oven
- Fireplace heater
- Make-up mirror with lights
- Set of pot and pans with lids, 2 cast iron frying pans, one large frying pan with lid
- 2 slow cookers
- 4-piece toaster, electric kettle, hand held electric mixer
- baking sheets, pizza pans, loaf pans, muffins tins, casserole dishes, cooking utensils
- all dry food goods, canned goods, but did receive half of the spices?
- vitamins and prescriptions
- pictures of children and special magnets on the fridge
- brand new food processor with a blender
- two tool boxes with screw drivers, hammers, socket set, measuring tapes, flashlights etc.
- 3 blue vases with roses, heart wind chime
- a box of 40 years of pictures and albums, mostly of children
- recipe books, one from mom and relatives over 45 years old
- personal papers, notebooks, automotive manual for a truck
- chair and stool
- winter coats, hats, mitts, gloves, boots, brand new pair of winter sorrel boots rated for -40C
- brand new pair of gum boots with liners and horses on them
- a wood walking cane
- 35-inch RCA tv old style and remote
- vcr/dvd combo player and remote
- brand new dvd player with remote
- 4 wood tv trays with holder
- vhs movies, one of daughters from the day she was born, received one vhs of dog training
- CDs music, received some but lots missing
- 2 tree candle holders
- wood art hanging picture made by a neighbour of a dog
- new afghan made by a good friend
- 10x14 wood frame containing pictures of the son, although the tenant did receive the 10x14 of her daughter
- a drawer of office supplies, staplers, printer paper, pens, extension cords etc.

- a drawer of tea towels, dish cloths, heat pads, oven mitts
- a drawer of personal papers, receipts, income tax etc.
- ornaments of wolves and dogs, did receive one ornament of puppies
- round end table
- bookcase made for me by a friend
- clothes, including 4 pairs of brand new wrangler jeans, new bras, new leggings , new bathing suit
- 3 cowboy hats, new western leather belt with wolf buckle, oil skin jacket
- brand new suede dress cowboy boots
- 8-inch tv/dvd combo, radio/cd player combo
- 4 laundry baskets
- floor stand oscillating fan
- real pearl necklace with pearl and diamond earrings in a case
- missing from jewelry box, 3 diamond rings, 2 montana silver bracelets, 1 montana silver hair barrette, 1 montana silver watch, 2 watches, 2 gold necklaces, obituary and memorial notices of dad and 2 brothers
- cremation ashes of 2 dogs and cat, I received ashes of 1 dog
- all make and hair supplies, some of which was very expensive (receipt attached when I re-ordered)
- body washes still in unwrapped packaging, gift basket full of body supplies
- 2 blow dryers, 3 curling irons
- dentures
- first aid supplies, band-aids, tensor wraps, thermometers, salves, powders
- cleaning supplies, laundry soaps, two wet jet mops with pads and refills, mops, brooms
- vacuum cleaner
- dog supplies collars, leashes, clippers, pull harness
- 3 table top fans
- 3 camping chairs, small table, 2 15-foot extension cords
- clothes line with all the accessories
- 3 wind chines, xmas lights

The document also states that numerous things in the rental unit required repair, including having no toilet for 3 days, a condemned gas stove which was not replaced until about a year, the gas furnace needed to be repaired and the tenant used a fireplace heater for 4 days in the winter. The landlord refused to hire someone and worked on it himself, but is not gas certified. The landlord told tenants that they could not shower or bath every day

and the landlord didn't want to pay for water. The sewer line froze and was backing up into the tenant's bathtub; the landlord said it would have to wait a few days.

The document also states that in mid-February the tenant's daughter attended to pick up the tenant's telephone and laptop and some belongings were outside. The landlord asked the tenant's daughter for \$500.00 for rent, and she complied. An e-transfer dated February 17, 2021 has been provided for this hearing, payable to the landlord.

The tenant has also provided another list as evidence for this hearing dated September 1, 2021:

- 2 large dog kennels
- 5 cutting boards
- backpack
- 3 various size roasters
- cordless blue mouse
- BCRA finals belt buckle

The tenant has also provided a letter from a person who states that her son lived at the rental property until January, 2018 and the landlord also resided on the property at that time. The writer's son was ill, and being late with his rent in January, 2018 the landlord turned off the hydro, but heat and hydro were included in the rent. On or about the 15th of January the landlord entered the rental unit while the writer's son was out and the landlord removed all of his belongings and changed the locks. It was reported that the landlord sold all of the belongings of the writer's son for \$200.00, and being homeless, the illness became worse and the writer's son passed away on April 9, 2018.

Analysis

Firstly, I accept the undisputed testimony of the tenant that the tenancy began on November 15, 2014, and I find it absolutely plausible that the items contained in the lists above were items belonging to the tenant and were in the rental unit when the tenant was taken to hospital.

The *Residential Tenancy Act* specifies how a tenancy ends, and this tenancy has absolutely not ended in accordance with the *Act*. The tenant's daughter paid the landlord \$500.00 on February 17, 2021. With respect to abandonment, the regulations specify that:

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or

(ii) from which the tenant has removed substantially all of the tenant's personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

In this case, I find that the landlord removed at least some of the tenant's personal belongings prior to waiting a month. I further find that the tenancy had not ended in accordance with the *Act*, the landlord did not receive express oral or written notice of the tenant's intention to not return to the rental property, and the landlord was fully aware that the tenant was in hospital.

Considering the undisputed testimony of the tenant, I order the landlord to return ALL of the items listed above to the tenant forthwith. If the landlord fails to do so, the tenant will be at liberty to apply for monetary compensation for the items missing and the landlord's failure to comply with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I order the landlord to return all of the tenant's personal property as set out above, failing which the tenant will be at liberty to apply for monetary compensation for the missing items and the landlord's failure to comply with the *Act*.

This order is final and binding and may be enforced.

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: October 07, 2021

Residential Tenancy Branch