



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order for the Landlord to return the Tenant's personal property pursuant to Sections 62, 65 and 67 of the Act.

The hearing was conducted via teleconference. The Landlord's Program Manager, RC, and the Tenant, JD, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant served the Notice of Dispute Resolution Proceeding package and evidence to the Landlord by email on November 23, 2021 (the "NoDRP package"). The Landlord accepted service of this legal document by email and noted it was received on November 23, 2021. I find that the Tenant sufficiently served the NoDRP package to the Landlord pursuant to Section 43(2)(b) of the *Residential Tenancy Regulation* and Section 71(2)(b) of the Act.

The Landlord applied for authority to substitutionally serve the Tenant with their evidence, and that authority was granted on February 24, 2022. The Landlord did not receive that decision until March 9, 2022 after making a call to an RTB Information Officer. The Landlord served their evidence on March 9, 2022, but the Tenant had not received the Landlord's email prior to the hearing. I find that the Tenant was not served

with the Landlord's evidence prior to the hearing, and I will not consider it in this decision.

Preliminary Matter – Jurisdiction

The Landlord stated that the housing facility the Tenant lived in was an emergency/homeless shelter. They do not have tenancy agreements with their residents. The Landlord provided because there are not many shelters in the city where this housing is located, people tend to stay for longer periods.

The Tenant testified that she was told that this housing was supportive housing arranged with BC Housing. She moved into the housing unit on April 2, 2020, and on April 26, 2020, she was transferred to a different supportive housing accommodation. In an email with another member of the program, the Tenant states, "*I will not speak to R. or I. again after the mentally abusive conversation that occurred on November 9, 2021 that caused me to flee for my safety.*" I find that the Tenant resided in the housing unit for a long period of time from April 2020 to November 2021, and possibly would have continued to live there but for an incident that caused her to flee for her safety on November 9, 2021. The Tenant maintained that laundry facilities were provided as well as meals, but her unit allowed her to prepare her own meals. The Tenant stated when she has stayed at a homeless shelter, she was never charged to stay there. In this supportive housing arrangement, she was made to sign an agreement that stipulated that \$375.00 from her social services payments would go directly to BC Housing. She was given only her support portion.

RTB Policy Guideline #46 helps parties understand issues that are likely to be relevant in an emergency shelter accommodation versus a supportive housing accommodation. The Policy Guideline states that:

Under section 1 of the Residential Tenancy Regulation, "transitional housing" means:

- (a) living accommodation provided on a temporary basis;*
- (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and;*
- (c) together with programs intended to assist tenants to become better able to live independently.*

While supportive housing is described as:

Supportive housing is long-term or permanent living accommodation for individuals who need support services to live independently. The Residential Tenancy Act applies to supportive housing, unlike emergency shelters and transitional housing which are excluded from the Act.

Under section 5 of the Act, landlords and tenants cannot avoid or contract out of the Act or regulations, so any policies put in place by supportive housing providers must be consistent with the Act and regulations.

While the programs and some of the housing offered by the organization the Program Manager works for can be rightfully called emergency shelters, I find that the housing that the Tenant was residing in is supportive housing as the Tenant was told. Her housing tenure was long-term and would have continued but for negative interactions with some staff. The housing portion of her social services benefits was given to BC Housing, and laundry facilities and meals were offered; however, the Tenant could make her own meals in her rental unit. Not all tenancies governed under the Act must originate with a written tenancy agreement.

I find based on the testimony of both Parties, that there is jurisdiction to hear this matter, and that the Act applies to the Landlord and Tenant.

Issue to be Decided

Is the Tenant entitled to an Order for the Landlord to return the Tenant's personal property?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirms that this tenancy has ended. The Landlord testified they still hold the Tenant's belongings and that it is their policy to hold a person's belongings for 30 days. In a text message stream provided in the Tenant's evidence package, the Landlord told the Tenant that they would hold her personal property for 30 days from November 9, 2021. Effectively, that would bring the Tenant up to December 9, 2021.

RC provided evidence that the Tenant was granted a 90 day extension, which brings the Tenant up to March 9, 2022.

The Tenant testified that the biggest barriers for her to pick up her personal property are the Tenant's financial resources and transportation to pick the property up and deliver it to her new residence. The Tenant testified that she is just getting settled this past month. The Landlord wants the Tenant's personal property picked up and taken away as it is taking up a large office space which they presently cannot use.

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.

I find that the Tenant's application for the return of her personal property demonstrates that she has not abandoned her personal property as some of her electronics and art table are monetarily valuable to the Tenant. In contrast, I find that the Landlord has not prevented the Tenant access to her personal property.

This is not a case that the Landlord has seized the Tenant's personal property. The Tenant is free to pick up her belongings, the Landlord wants this. The Tenant testified that she does not have the financial means to get her personal property moved; however, I find that the Tenant must find a way to pick up her personal property from the Landlord's place of business.

I find that the Tenant has failed to demonstrate her application and I dismiss the Tenant's application. The Tenant has until April 22, 2022 to remove her personal property from the Landlord's office.

Conclusion

The Tenant's application is dismissed. The Tenant has until April 22, 2022 to remove her belongings from the Landlord's office.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 17, 2022

Residential Tenancy Branch