



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KITSILANO MANAGEMENT
LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, RPP**

CNR

Introduction

This hearing dealt with two applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order for the landlord to return the tenant’s personal property pursuant to section 65.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line for eleven minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant testified that the named landlord AR is the manager of the corporate landlord.

At the outset, the tenant stated he was locked out of the unit and does not want to return. He withdrew his applications to cancel the 10 Day Notice which are dismissed without leave to reapply.

The tenant stated the only issue related to return of his personal possessions.

As the landlord did not attend the hearing, the tenant provided testimony regarding service of the Notice of Hearing and Application for Dispute Resolution. The tenant brought the application on February 26, 2022. He testified he was locked out of his unit that day and personally served AG, the agent of the landlord two days after the filing.

Further to the tenant's credible testimony, I find the tenant personally served the landlord with the documents on March 1, 2022.

Issue(s) to be Decided

Is the tenant entitled to return of personal property?

Background and Evidence

The tenant provided uncontradicted testimony as the landlord did not attend the hearing.

The tenant stated as follows. The verbal tenancy of a room began on October 1, 2019 for \$507.50 rent payable on the first of the month. The tenant provided a security deposit of \$250.00 which the landlord holds. The tenant failed to pay rent on February 1, 2022. Without notice to the tenant, the landlord put a padlock on the door of the unit when the tenant was out on February 26, 2022.

The tenant testified that he has possessions in the unit that he wants to be able to retrieve. The possessions include a bicycle and personal items.

The tenant stated the landlord's actions have left him homeless.

Analysis

Division 4 of the Act sets out how parties may end a tenancy. Except for Section 56 that provides for ending a tenancy early by a landlord, the Act requires the provision of a Notice to End Tenancy and such Notice must comply with the form and content required by the Act and where given by a landlord must be in the approved form.

The undisputed evidence indicated that the tenant was not provided with any written Notice and no application was made by the landlord to end the tenancy early pursuant to section 56.

As such, I find that the landlord ended the tenancy without complying with the Act and has no right under the Act to change the locks of the unit or stop the tenant from entering the unit to retrieve his possessions.

As a result of this action by the landlord, the tenant stated he was left without housing and is presently homeless.

As such, I find that the tenant suffered a loss because of the landlord's breach of the Act and may bring an application for compensation under the Act. As the tenant stated at the hearing that they did not wish to return to the unit, this decision does not address whether the tenant is entitled to an Order of Possession of the unit.

Section 24 of the Residential Tenancy Regulation (the "Regulation") provides that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the property in the unit after vacating the unit and only if the landlord receives notice of the tenant's intention not to return to the residential property. Section 25 of the

Regulation further provides that a landlord must store tenant's personal property for no less than 60 days following the date of removal.

There is no evidence to support that the tenant has abandoned the property. The tenant states that the landlord has kept their belongings and denied the tenant access to the unit. I find the actions of the landlord to be high handed and contrary to the Act.

Section 65(e) allows the Director to make an Order requiring a landlord to return personal property:

65 (1) Without limiting the general authority in section 62
(3) *[arbitrator's authority]*, if an arbitrator finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the arbitrator 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;

Further to the uncontradicted credible testimony of the tenant and the Act, I find that the tenant is entitled to an Order for the return of the personal property at the cost of the landlord.

Accordingly, I order the landlord to return the belongings of the tenant directly to the tenant within 5 days of the date of receipt of this Decision. I direct the landlord to provide two times within the week following receipt of this Decision when the tenant may collect their possessions. These two times are to be at least 3 hours each and are to take place between 9 AM and 6 PM. The location and times are to be sent to the tenant by email, his email address appearing on the first page.

Should the landlord fail to return the property as ordered, the tenant is at liberty to make an application seeking damages in relation to the loss of their personal property.

As the tenant is not returning to the unit and as the landlord has not returned the full security deposit to the tenant, the tenant may make an application in relation to return of their security deposit.

Conclusion

I grant the tenant an order under Section 65(1) of the Act as set out above. This Order must be served on the landlord.

This Order may be filed and enforced in the Courts of the Province of BC.

If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 09, 2022

Residential Tenancy Branch