



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes AAT, FFT

Introduction

The Tenant filed an Application on May 13, 2023 seeking the Landlord's allowance for access to the rental unit for the Tenant/their guests. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 5, 2023.

The Tenant attended the conference call hearing; the Landlord did not attend. I provided the Tenant the opportunity to ask questions at the outset of the hearing.

Preliminary Matter – service of the Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. This means the Tenant must provide proof that they served the document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out how they served this notice to the Landlord via registered mail on May 24, 2023. They provided a copy of their post office receipt, showing a tracking number, as evidence of this transaction.

Based on the submissions of the Tenant, I accept that they served the Notice of Dispute Resolution Proceeding to the Landlord in a manner complying with s. 89(1)(c) of the *Act*. I proceeded with the hearing in the Landlord's absence.

Preliminary Matter – issue faced by the Tenant as of the hearing date

At the outset, the Tenant stated that they moved out from the rental unit on May 30, 2023.

Because of this, I dismiss the Tenant's Application seeking access to the rental unit for themselves/their guests. This issue is no longer relevant where the landlord-tenant relationship has ended, and the Tenant no longer needs access to the rental unit.

The Tenant described the issue of their personal property still being held by the Landlord since before the end of the tenancy. I amend the issues *sad per* Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* to reflect this current status and the Tenant's need more accurately.

Issue(s) to be Decided

Is the Landlord obligated to return the Tenant's personal property items?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenant described events that took place during the final month they lived at the rental unit. The Tenant also described the arrangement they had in place whereby the rent amount of \$2,000 was paid by them through their work completed for the Landlord.

The Tenant kept their own work tools and equipment in the garage on the rental unit property. The Tenant had keys for the rental unit until May 5; on that date they sent a message to the Landlord saying they would be removing their equipment/tools from the garage on the property. On May 5 the Landlord visited and asked for the keys – they provided the keys to the Landlord's family member who stated they would return them; however, that Landlord's family member then did not return the keys for that garage where the Tenant were storing their equipment/tools.

The Tenant called the Landlord multiple times about the issue and the Landlord did not return calls and did not visit again to the rental unit property. Further, on May 6 the Landlord visited to the rental unit and bolted the door of the garage where the Tenant kept their personal property items.

On May 8 the Landlord visited and provided some of the Tenant's personal property items, returning these to the Tenant. According to the Tenant in the hearing, these were not useful items. The Landlord provided more items to the Tenant on June 3.

On my request the Tenant provided a copy of their email message to the Landlord, dated May 27, 2023. This contains a list of 20 items to be returned, some of which the Landlord had already returned to the Tenant:

List of tools to be returned:

- 1- Ac Vacuum pump with box .
- 2- Ac manifold gauge with hose.
- 3- Ac nitrogen tank.
- 4- turbo Torch carrying kits.
- 5- 2 torch tanks.
- 6- Castco dolly.
- 7- sheet metal cutter with table and two heavy duty cables.
- 8- 25 of f,d with sleeves box.
- 9- 2 ,3" venting kits .
- 10- gas fittings pipes with all sizes with red box.
- 11- 1 , 25' 8"flex.
- 12- 20' 3" venting pipes.
- 13- 30' 2" venting pipes.
- 14- box of 3" and 2" 90 & 45 elbows.
- 15- 5 bottles of thread machine.
- 16- 2 box of tiles.
- 17- spot welding machine was outside the shop, on Friday May 26.
- 18- York air handler box.
- 19- back gauge green angle for 52 sheet metal sheers.
- 20- Lincoln welding machine with welding jacket and gloves and helmet co2 tank and blue cart.

The Tenant in the hearing stated that 15 of these 20 items were still held by the Landlord in their garage, not yet returned to them. The Tenant stated they had contacted the RCMP about this matter and the RCMP have a file number in place.

Analysis

The Act s. 65 provides that an arbitrator may order that "personal property seized or received by a landlord contrary to this Act, or a tenancy agreement must be returned."

From what the Tenant provided in their submissions, I find as fact that the Landlord is holding the Tenant's personal property, with no prior arrangement in place for them to do so. This is

based on the evidence submitted by the Tenant which provides ample detail on each individual item. The evidence also sets out the Tenant's direct request to the Landlord for the return of these personal property items.

Because of these facts, I find the Landlord is holding personal property belonging to the Tenant. The Landlord shall return these items forthwith, within the timeline I provide below. I caution the Landlord that the Tenant is free to pursue a claim for monetary compensation should the Landlord not return these items to the Tenant. As well, the Tenant may present this decision to the police as proof that they received an arbitrator's order for their own personal property items to be returned.

Because the Tenant was successful in this Application, I award the full amount of the \$100 Application filing fee to them.

Conclusion

The Landlord shall return the items to the Tenant **by September 10, 2023**. This affords the Landlord a reasonable opportunity to present the items to the Tenant in a damage-free condition to the Tenant.

I order the Landlord to pay the Tenant the amount of \$100 for the Application filing fee. I grant the Tenant a monetary order for this amount. The Tenant may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch, under s. 9.1.(1) of the *Act*.

Dated: September 6, 2023

Residential Tenancy Branch