



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 2, 2013, by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlords attended the scheduled teleconference hearing; however, no one attended on behalf of the Tenant.

Issue(s) to be Decided

1. Have the Landlords served the Tenant notice of this application and proceeding in accordance with the Act?
2. Has the Tenant abandoned the rental unit?

Background and Evidence

The parties entered into a month to month tenancy that began on December 29, 2012. Rent was payable on the first of each month in the amount of \$610.00.

The Landlord testified that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on October 2, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence and testimony.

The Agent testified that on September 19, 2013, he posted a 10 Day Notice to the Tenant's door for \$190.00 of unpaid rent that was due on September 1, 2013. He stated that the Tenant approached him on September 28, 2013 and advised that she had moved out most of her possessions but she had lost her keys. The Agent arranged to have the locks changed that day and told the Tenant that she could contact him to get the keys and get the rest of her possessions.

The Agent stated that he has spoken to the Tenant a few more times but that she has never returned to the unit to get the keys or to pick up her possessions.

Analysis

The Landlord filed her application on October 2, 2013, and noted in the following in the details of the dispute:

Tenant had informed she would be out by Sept 30.... – tenant has left the building and staying elsewhere but is in phone contact

The Agent testified that the locks were changed September 28, 2013, and although he has had several telephone conversations with the Tenant she has not returned to the unit.

Section 44(1)(d) of the Act stipulates that a tenancy ends when a tenant vacates or abandons the rental unit.

Based on the above I find that the Tenant has not resided at the unit since September 28, 2013, and has abandoned the unit effective September 30, 2013, leaving possessions inside. I have pasted Part 5 of the Regulation to end this decision so the Landlord is aware of their obligations regarding abandoned property.

Section 89 of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary order which requires that the Landlord serve the Tenant in one of the following ways as set out under section 89(1) of the *Residential Tenancy Act* as follows:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail **to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord [emphasis added];
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

The Landlord served the Tenant by registered mail on October 2, 2013, to the rental unit address; even though the Landlord knew the Tenant was no longer residing there. Accordingly, I find that service of the application and hearing documents were not conducted in accordance with the Act and the monetary claim is hereby dismissed, with leave to reapply.

Conclusion

The Landlord's claim for an Order of Possession is dismissed as the Landlord regained possession on September 30, 2013, two days after they changed the locks and the Tenant failed to return to the unit.

The claim for a Monetary Order is dismissed, with leave to reapply.

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 28, 2013

Residential Tenancy Branch

Residential Tenancy Regulation Part 5 ♦ Abandonment of Personal Property

Abandonment of personal property

- 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 he or she 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 he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her 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.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

- 25** (1) The landlord must
- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
 - (b) keep a written inventory of the property,
 - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

