



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RPP

Introduction:

This hearing was convened in response to an Application for Dispute Resolution in which the Applicant applied for the return of personal property.

The Applicant stated that on March 09, 2016 the Application for Dispute Resolution and the Notice of Hearing were served to the Respondent, via registered mail. The Agent for the Respondent acknowledged receipt of these documents.

The Applicant submitted one page of evidence to the Residential Tenancy Branch, which was a hand written submission. The Applicant stated that this document was mailed to the Respondent sometime in March of 2016. The Agent for the Respondent stated that this document was not received by the Respondent.

The Respondent submitted 15 pages of evidence to the Residential Tenancy Branch on April 04, 2016. The Agent for the Respondent stated that this evidence was mailed to the service address for the Applicant but was returned by Canada Post because the addressee could not be located. The Applicant stated that the service address she provided is her employer's address.

The parties were advised that the documents they submitted could not be referred to during the hearing as they are not available to the other party; that the parties may refer to the documents during the hearing; and that if, during the hearing, it appears the documents are relevant to the issues in dispute, the hearing will be adjourned to provide the parties with the opportunity to re-serve the documents. At the conclusion of the hearing both parties indicated they did not require an adjournment for the purposes of re-serving their evidence and I am satisfied that I am able to adjudicate this matter on the basis of the testimony provided.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Applicant entitled to an Order requiring the Respondent to return personal property?

Background and Evidence:

The Applicant and the Respondent agree that:

- the Respondent entered into a written tenancy agreement with a third party that the Applicant identifies as her former boyfriend;
- the former boyfriend is identified on the tenancy agreement as the tenant and the Applicant is identified on the tenancy agreement as an occupant; and
- neither party submitted a copy of the tenancy agreement to the Residential Tenancy Branch.

The Applicant stated that she is not currently communicating with her former boyfriend and she has not informed him that she has filed this Application for Dispute Resolution.

The Agent for the Respondent stated that that:

- the Applicant is an occupant of the unit and has never been accepted as a tenant of the unit;
- the Respondent obtained an Order of Possession that required the tenant to vacate the rental unit;
- the Order of Possession was posted on the door of the rental unit on January 29, 2016;
- the Respondent subsequently concluded that the tenant had abandoned the rental unit;
- on February 05, 2016 the Respondent changed the locks to the rental unit as a result of her conclusion that the unit had been abandoned;
- on February 15, 2016 an unknown person broke into the rental unit;
- sometime between February 16, 2016 and February 20, 2016 the property left in the rental unit was moved into another area of the residential complex by the Agent for the Respondent;
- the Respondent determined that the property in the unit had no resale value;
- the Respondent did not find a computer or jewelry in the rental unit; and
- the property left in the unit has now been discarded.

The Applicant stated that she was living in the rental unit until February 05, 2016, at which time she returned home to find the locks had been changed. She stated that she has been unable to recover any of her valuable items left in the unit, which included new luggage, legal papers, a computer, clothing, and jewelry.

The Applicant stated approximately 3 or 4 weeks ago the Agent for the Respondent told her that she would return her personal property if the Applicant paid \$7,000.00. The Agent for the Respondent denied this allegation.

Analysis:

On the basis of the undisputed evidence I find that the Applicant is listed as an occupant on the written tenancy agreement the Respondent and the Applicant's former boyfriend entered into for this rental unit.

The *Residential Tenancy Act (Act)* does not define the term "occupant". Residential Tenancy Branch Policy Guideline #13, with which I concur, reads, in part:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In the absence of any evidence that the Applicant and the Respondent entered into a written or an oral tenancy agreement, I find that the Applicant was an occupant of the rental unit and not a tenant and that she had no rights or obligations for this tenancy.

Section 9 of the *Act* authorizes me to resolve disputes between landlords and tenants. As the Applicant has failed to establish that she entered into a tenancy agreement with the Respondent, I find that I do not have jurisdiction to resolve a dispute between these parties. In reaching this conclusion I was heavily influenced by the testimony of the Applicant, who stated that she has filed this Application for Dispute Resolution without the knowledge or consent of the person who was the tenant of this rental unit.

As I do not have authority to resolve disputes between landlords and occupants, I must dismiss the Application for Dispute Resolution.

Conclusion:

I have declined jurisdiction in this matter. This decision is made on authority delegated to me by the Director under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 21, 2016

Residential Tenancy Branch