



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent and based on the tenant's notice to end tenancy
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on March 2, 2016. On May 23, 2017 the tenant gave the landlord a notice to end the tenancy on June 30, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant by mailing, by registered mail to where the tenant resides July 4, 2017. The landlord testified the tenant picked up the package as it was not returned to her. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant lived in the rental unit prior to the landlord purchasing it. The landlord testified the parties entered into a rental agreement in writing on August 1, 2016. The rent was \$1645 payable on the first day of each month. The tenant paid a security deposit of \$822.50 at the start of this tenancy.

It appears the tenant vacated the rental unit sometime in early July but he failed to remove his belongings.

The landlord re-rented the rental unit for July 1, 2017. However, the new tenant was not able to move into the rental unit until July 15, 2017.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant(s) has not made an application to set aside the 10 Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Further the tenant gave notice in writing that he was vacating the rental unit as on June 30, 2017. Accordingly, I granted the landlord an Order for Possession on 2 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

I ordered that the tenant pay to the landlord the sum of \$100 for the cost of the filing fee paid by the landlord to the Residential Tenancy Branch Registry such sum may be deducted from the security deposit.

Conclusion:

I granted the landlord an Order of Possession on 2 days notice and I ordered that tenant to pay to the landlord the sum of \$100 such sum may be deducted from the security deposit.

The landlord expressed concern as to what she was to do with the tenant's belongings. I encouraged her to talk to an information officer at the Residential Tenancy Branch or her solicitor about her obligations relating to the tenant's personal property and her rights where the tenant over-held. As a courtesy to her I included section of the Residential Tenancy Act Regulations which deals with abandoned 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).

Tenant's claim for abandoned property

- #### **26 (1)** If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to

- (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing and storing the property, and
 - (ii) a search required to comply with section 27 [*notice of disposition*], and
 - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

...

Landlord's duty of care

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

This decision is final and binding on both parties.

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: August 28, 2017

Residential Tenancy Branch