



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding British Columbia Kinsmen Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP

Introduction

The tenant sought an order for the return of her personal property from her former landlord, pursuant to section 65 of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on April 9, 2019 and a dispute resolution hearing was held on May 27, 2019. The tenant and the landlord’s representatives attended the hearing, were given an opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issue of service.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

Issue

Is the tenant is entitled to an order for the return of her personal property?

Background and Evidence

In this dispute, the landlord obtained an order of possession (“Order”) on January 22, 2019. On February 14, 2019 the landlord filed the order of possession in the Supreme Court of British Columbia and obtained a writ of possession.

(Copies of the January 22, 2019 Order, the Supreme Court Requisition, an Affidavit, and the Writ of Possession were filed into evidence by the landlord.)

The tenant testified that the bailiff executed the writ of possession on February 26, 2019. The bailiff then seized most, but not all, of the tenant's personal property.

The tenant's application stated that

I had a sewing table, my kids pictures, new hair flat iron, washer dryer, new kid toys, kid clothing, kitchen items, personal clothing items, bedding, wall pictures, shoes, left in unit i wanted returned. Sent an email to landlord on March 6 requesting to get items no response. Asked [landlord's representative] sr landlord on March 5 she would not let me in.

The email of March 6, 2019 was submitted into evidence; the email reads "I did not get back my new haair [sic] straightner [sic] or clothes. I want them returned." The tenant testified that the washer and dryer was not seized.

The landlord's representative (the "landlord" for brevity) testified that the bailiff put the tenant's property into storage for 21 days, and that the bailiff explained this process to the tenant. After the 21 days elapsed the property was auctioned off.

Regarding the washer and dryer, the landlord testified that these were taken away to the dump not long after the tenancy ended, and the writ of possession had been executed. Finally, the landlord testified that they no longer have any of the tenant's property in their possession.

The tenant testified that she was never given an opportunity to get the washer and dryer. The landlord testified that the tenant had two opportunities to get this property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 65(1)(e) of the Act, under which the tenant seeks an order, states that

[. . .] if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director 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;

In this case, the landlord obtained a decision and an order of possession under section 55 of the Act on January 22, 2019. On February 14, 2019, the landlord filed the order of possession in the Supreme Court pursuant to section 84(1) of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for an order under section 65 of the Act. I find no contravention of the Act by the landlord and conclude that the seizure of the tenant's personal property was not contrary to the Act.

Finally, while the landlord's disposal of the tenant's washer and dryer may not have been in accordance with the Act, as the landlord is no longer in possession of those pieces of property I make no order against the landlord for the return of that property.

Conclusion

I hereby dismiss the tenant's application without 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 Act.

Dated: May 27, 2019

Residential Tenancy Branch