



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RPP, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the tenant's personal property, pursuant to section 65; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant JW (the tenant) and landlords DW (the landlord) and BN attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

- an order for the landlord to return the tenant's personal property?

- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on November 01, 2021 and ended on September 30, 2022. Monthly rent was \$2,400.00, due on the first day of the month. The landlord collected a security deposit of \$1,200.00 and a pet damage deposit of \$300.00 and the tenant authorized the landlord to retain the security and pet deposits.

Both parties agreed that when the tenant moved out, she left her cat and the cat's belongings (the belongings) outside the rental unit.

The tenant affirmed that she asked two neighbours to watch for the belongings. The tenant returned to the rental unit's outside area six days later and noticed that the belongings were missing, and the landlord informed her that she gave the cat.

The tenant emailed the landlord on October 4, 2022: "I had asked your father and surrounding neighbourhood to watch out for Oreo for a few days. They agreed, for he is a fabulous cat and they'll miss him. I will be by today to gather things up. I hope he is there as well."

The tenant submitted a photograph showing the area outside the rental unit where the tenant claims she left the belongings.

The tenant submitted an affidavit signed by neighbour GP on February 10, 2023:

[the tenant] visited me to ask me to lookout for their cat, Oreo (whom I had become accustomed to visiting with). She explained that they had not secured pet-friendly accommodations as of yet; however, the gentlemen that lives in the lower suite had agreed to watch out for the cat on a temporary basis. I remember her saying she would be back in a week to retrieve Oreo and that she had left everything of Oreo's under the residents shared carport.

The landlord stated that she did not agree to watch the tenant's belongings and she does not know what happened with the belongings. The landlord saw the cat outside the rental unit between October 3 and 12, 2022 when she was showing the rental unit to new tenants. The landlord did not tell the tenant that she gave the cat.

The landlord submitted a letter signed by neighbour TW on December 21, 2022:

I, at no time, was approached by the former upstairs tenant of [rental unit's address], in regards to looking after her cat, Oreo.

[...]

At no point, did the former tenant come and ask me to feed or look after her cat and I also did not see her return to the property after October 3, 2022, to ensure the cat's well-being at any time.

[...]

The residence is located on a very busy roadway and I was very concerned about the cat being left unattended.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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) of the Act states:

Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], 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;

I accept the undisputed testimony that the tenant did not ask the landlord to be responsible for the tenant's belongings left outside the rental unit when the tenancy ended. The letters dated December 21, 2022 and February 10, 2023 indicate neighbours GP and TW were aware the tenant's belongings were outside the rental unit.

The landlord is responsible for the tenant's belongings left in the rental unit, not outside the rental unit. Furthermore, the tenant claims she asked two neighbours to be responsible for the belongings left outside the rental unit, not the landlord.

Based on the above, I find the tenant failed to prove, on a balance of probabilities, that the landlord seized the tenant's belongings. I dismiss the tenant's application.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I 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 *Residential Tenancy Act*.

Dated: February 28, 2023

Residential Tenancy Branch