

## **DECISION**

Dispute Codes      RPP

### Introduction

This hearing dealt with the tenant's application for return of the tenant's personal property. The landlord did not appear at the hearing. The tenant appeared at the hearing and was assisted by an agent. A witness also appeared on behalf of the tenant. The agent testified that he personally served the landlord with notification of this hearing on May 17, 2010 in the driveway of the landlord's property and in the presence of the tenant. I was satisfied the landlord was sufficiently served with notification of this hearing in a manner that complies with the Act and I proceeded to hear from the tenant, the tenant's agent and the witness without the landlord present.

### Issues(s) to be Decided

Is the tenant entitled to an Order requiring the landlord return the tenant's personal property?

### Background and Evidence

I heard the following affirmed testimony from the tenant, tenant's agent and witness. The tenancy commenced approximately 15 months ago. The tenant is required to pay \$650.00 on the 1<sup>st</sup> day of every month under the tenancy agreement. The tenant had paid rent for March 2010. The tenant required medical treatment on March 28, 2010 and the landlord drove the tenant to the hospital. The tenant was subsequently hospitalized and heavily medicated until mid-April 2010. On April 25, 2010 the witness attended the rental unit to pick up mail for the tenant and discovered that the tenant's possessions had been removed from the rental unit and observed somebody else's possessions were on the patio adjoining the rental unit. With assistance of hospital staff, the tenant wrote a letter to the landlord on April 28, 2010 requesting he be given access to his personal belongings and that any outstanding issues be resolved once the

tenant was discharged from the hospital. On April 30, 2010 the tenant received a written response from the landlord.

The letter written by the landlord indicates the landlord evicted the tenant and packed and stored his belongings because of non-payment of rent for April 2010. The landlord also indicated that upon payment of \$1,716.00 the landlord would permit the tenant access to his belongings being held in storage and that she would not continue to pay for storage. The sum of \$1,716.00 includes the landlord's charges for packing and moving the tenant's belongings and cleaning the rental unit.

The agent testified that in May, after receiving the landlord's letter, the agent contacted the landlord by telephone but was unsuccessful in compelling the landlord to make the tenant's personal property made available to the tenant. Accordingly, this application was made with the Residential Tenancy Branch.

The tenant acknowledged that he had not paid rent for April 2010 due to his hospitalization but that he had always paid his rent in the past. The tenant testified that he did not communicate to the landlord that he would not be returning to the rental unit and that when he was taken to the hospital he did not know how long he would be hospitalized. The tenant stated that he was not served with a Notice to End Tenancy and that upon learning his possessions had been removed from the rental unit his health condition was negatively impacted. The tenant is most concerned about retrieving his identification and mail so that he can deposit cheques and try to rent new accommodation. The tenant also expressed how he has had to live in borrowed clothes and does not have access to some of his daughter's clothing and items.

The tenant also stated that he contacted the storage facility and was informed that payment of \$300.00 would be required to gain access to the storage unit and that access to the storage unit would not be given until June 2, 2010.

With this application the tenant is requesting an Order that the landlord return his personal property. During the hearing, the tenant specifically requested that the landlord provide the tenant access to his personal property immediately upon request of the tenant but no later than June 1, 2010.

### Analysis

A tenancy remains in effect until such time it ends under section 44 of the Act. In this case I heard that rent was unpaid for April 2010. In order for the landlord to have ended the tenancy for unpaid rent, the landlord would have had to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. A 10 Day Notice provides the tenant the opportunity to pay the outstanding rent five days after receiving such a Notice. The tenant testified that the landlord knew the tenant was hospitalized and where to serve him and I accept that the tenant was not served with a 10 Day Notice to End Tenancy for Unpaid Rent. Therefore, I do not find that the tenancy had ended for unpaid rent.

Even if a tenancy has ended and the tenant has not vacated the rental unit, the Act prohibits the landlord from taking possession of the rental unit without a Writ of Possession issued by The Supreme Court of British Columbia. In order to obtain a Writ of Possession where the *Residential Tenancy Act* applies, the landlord must first obtain an Order of Possession from the Residential Tenancy Branch. I find that no Order of Possession was granted to the landlord with respect to this tenancy. Therefore, I do not find the landlord had a Writ of Possession to evict the tenant.

Section 44 of the Act also provides that a tenancy ends when a tenant abandons the rental unit. Abandonment is the only time a landlord may remove the tenant's possessions from the rental unit without the above described court order. I have considered whether there is sufficient evidence of abandonment. Section 24 of the Residential Tenancy Regulation provides for when a landlord may consider a tenant to have abandoned personal property. Section 24 provides as follows:

**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.

Given the evidence before me, I do not find the tenant had abandoned his personal property. Rather, I am satisfied that the tenancy had not legally ended and the tenant had not vacated or substantially removed all of his personal property. The tenant had paid rent up until March 31, 2010 and the possessions were removed by the landlord less one month after the March 31, 2010. The tenant had not expressly communicated to the landlord that he would not be returning to the rental unit. Nor do I find the landlord was of a position to determine that the circumstances were such that the tenant could not be expected to return to the rental unit.

In light of the above, I find the landlord took possession of the rental unit illegally and removed the tenant's property without authority under the Act or the court. Rather, upon review of the landlord's letter received by the tenant April 30, 2010 it appears the

landlord is holding the tenant's possession as ransom for payment. I find the landlord's actions not only violated the requirements of the Act but are egregious.

With this decision I provide the tenant with an ORDER to serve upon the landlord. **The landlord is hereby ORDERED to return the tenant's property to the tenant at the date and time specified by the tenant but no later than June 1, 2010 and at no cost to the tenant.** The landlord must take all necessary steps to have the tenant's possessions made available to the tenant prior to the date and time the possessions are to be retrieved by the tenant. This includes, but is not limited to, ensuring all monies owed on the storage facility are paid and the tenant is provided with a means to gain access to the storage unit (ie: keys or access codes) if necessary. The tenant is at liberty to have an agent act on his behalf or provide assistance in retrieving his possession and the tenant is at liberty to request assistance of police to enforce this ORDER.

The tenant has not requested monetary compensation in this application and I cannot award the tenant monetary compensation with this decision. However, the tenant is at liberty to make a subsequent application for monetary compensation against the landlord for any damages or loss suffered by the tenant due to the landlord's actions. Such a claim may include costs associated to moving the possession out of storage.

In addition to losses the tenant may have already suffered, the landlord is hereby informed that the landlord's failure to return the tenant's property as ordered may entitle the tenant to additional compensation. The Act provides for monetary compensation up to \$25,000.00 for pecuniary losses (ie: loss of property, etc.) and non-pecuniary damages (ie: suffering, grief, mental distress, etc.) and aggravated damages. Further information on claims for damages or loss may be found in Residential Tenancy Policy Guideline 16: *Claims in Damages*.

### Conclusion

**The landlord is ORDERED to return the tenant's personal property on the date and time specified by the tenant and at no cost to the tenant.** The tenant is provided an ORDER with this decision to serve upon the landlord.

The tenant retains the right to make a subsequent application for monetary compensation against the landlord.

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: May 21, 2010.

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Dispute Resolution Officer