

Residential Tenancies Tribunal

Application 2024-0381-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 4-June-2024.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as “the tenants” attended by teleconference. Applicant 2 authorized applicant 1 to speak on his behalf.
3. The respondent, [REDACTED] (agent for the owner), hereinafter referred to as “the landlord” attended by teleconference. Also present was [REDACTED], the owner of the property as a support person.

Preliminary Matters

4. The tenants submitted an affidavit with their application stating that they had served the landlord electronically via *Facebook Messenger* on 10-May-2024 (TT#1). The respondent confirmed that he received the document on that date. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
5. There was a verbal rental agreement which commenced approximately 16 years ago with applicant 2 and it was later in the tenancy when applicant 1 moved into the unit. The tenant’s vacated the unit on 1-August-2023. Rent was \$575.00 per month due on the first of each month. A security deposit was never paid.

Issues before the Tribunal

6. The tenant is seeking:
 - a. Return of Possessions valued at \$700.00.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*. Also, relevant and considered in this decision is Section 32: Abandoned Personal Property.

Issue # 1: Return of Possessions valued at \$700.00

Tenant's Position

8. Applicant 1 testified that when they vacated the unit on 1-August-2023 they had no choice but to leave their shed on the property and make arrangements to have someone come at a later date to have it removed. Applicant 1 testified that she was unable to find someone at that time as there just wasn't anyone in the community equipped to complete that kind of work and then winter was upon them. Applicant 1 testified that she found a person who was willing to remove the shed in April 2024 but upon arrival was prohibited from doing so by the landlord. Applicant 1 testified that they put the shed on the property approximately 8 years ago with permission from the landlord and it cost \$700.00 at that time to have the shed placed on the property. The tenants are seeking permission to enter the property and have their possessions (the shed) returned.

Landlord's Position

9. The landlord did not dispute that the shed belongs to the tenants, however he did dispute that he should allow the tenants access to retrieve it at this point. The landlord stated that the tenants had plenty of time in the summer and fall of 2023 to have the shed removed from the property but made no attempts to do so and he stated that in his opinion, the shed was abandoned by the tenants. The owner of the property testified that a person came unto her property in April 2024 regarding the shed who was verbally abusive in nature in front of her grandchildren. The owner of the property stated that she will allow access to her property to retrieve the shed if they pay her rent for the time the shed was left on her property.

Analysis

10. Section 32 of the *Residential Tenancies Act, 2018* states:

Abandoned Personal Property

32.(1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

- a) remove the personal property and immediately place it in storage; or
- b) store the personal property on the residential premises in a safe manner.

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

(3) A landlord who stores a tenant's personal property under subsection (1) shall, at the earliest reasonable opportunity,

- a) provide the Director with an inventory of the property; and
- b) provide the tenant with a copy of the inventory, if the landlord can locate the tenant.

(9) Where a tenant or owner does not take possession of personal property within the 30-day period, the landlord may sell the personal property subject to the terms and conditions set by the Director.

11. Based on the circumstances, I accept that dealing with a shed abandoned on the residential premises is not the same as dealing with some furniture and clothing left in the unit. I accept that the landlord was unable to take the shed to a storage unit as stated in Section 32 above and had no choice to but to store it on the property; however, the landlord also failed to take the appropriate steps / measures necessary as stated above. The homeowner stated that she is not opposed to releasing the shed to the tenants at this time. However, due to the fact that the shed has been abandoned for 11 months and has taken up space on the property, she is seeking some amount of rent to be paid for the past 11 months. I find that when the 30 days were up, the landlord could have made application to the *Director* to have the shed sold and to use the funds to offset the cost of storing the shed on the property. With that said, this tribunal can only deal with the application from the tenants for the purpose of this decision. With regard to the tenant's obligations, I accept that the tenants had trouble finding someone to remove the shed, but it was still their responsibility to have all personal property removed from the residential premises in a timely fashion and it has been 11 months to date. I accept that both parties were negligent in handling the situation properly and as such, I find that the tenants have 30 days from the date this *Decision* is received to have the shed removed from the residential premises without any interference from the landlord.

Decision

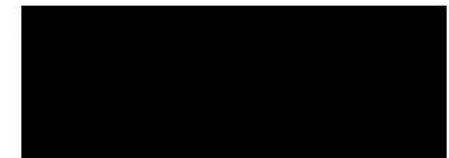
12. The tenant's claim to have possessions returned succeeds.
13. The landlord shall allow the tenants and / or a person(s) representing the tenants reasonable access to the property that is mutually agreed upon without interference, until such time as the shed is removed.

Summary of Decision

14. The tenant's claim to have possessions returned succeeds.
15. The landlord shall allow the tenants and /or a person(s) representing the tenants reasonable access to the property that is mutually agreed upon without interference, until such time as the shed is removed.

June 26, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office