



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession as a result of that breach?

### Background and Evidence

The Landlord affirmed that the Notice of Dispute Resolution hearing documents were posted to the rental unit door on August 5, 2011.

The parties entered into a month to month tenancy that began on July 1, 2005 for a subsidized rental unit. The subsidized monthly rent of \$348.00 is payable on the first of each month.

The Landlord affirmed that since the onset of this tenancy the Tenant has had a history of disappearing for several weeks. It was not an issue previously as her rent was paid directly to the Landlord from the Ministry of Social Development and she would always return to the rental unit within a few months. However, this time the Tenant has been gone for five or six months.

The Landlord stated that they were completing renovations to the kitchens in this building. They had posted a notice of entry back at the beginning of May 2011 which is when they noticed the Tenant had not been living in the unit. They monitored her unit for a few weeks and contacted the Ministry of Social Development to inform them she was not residing in the unit even though she left most of her possession in the unit. The Landlord received a telephone call from the hospital and again from the Tenant asking if she could return home. The Landlord said she would always say yes however the Tenant would never show up. The Ministry staff told the Landlord they were paying for the Tenant's transportation to the hospital and noticed that she was always leaving from a different home address than the rental unit so they stopped paying her rent as of July 1, 2011.

When July 1, 2011 rent was not paid a 10 Day Notice was posted to the Tenant's door on July 11, 2011 in the presence of a witness. The Landlord is seeking an Order of Possession as a result of this non payment of rent and due to the Tenant's breach of the tenancy agreement. The Landlord noted that section 18 of their tenancy agreement states "As the rent for the rental unit is geared to income, if the tenant is absent from the rental unit for three consecutive months or longer without the prior written consent of the landlord, the landlord may end the tenancy, even if the rent is paid for that period".

### Analysis

Section 89 (2) provides ways an Application for Dispute Resolution hearing documents may be served upon a tenant while Section 88 of the Act provides ways a Notice to End Tenancy may be served upon a tenant. When seeking an Order of Possession, the Act provides that both the Application for Dispute Resolution and the 10 Day Notice may be posted on the door at the address where the person resides. Although the Tenant may not have been residing at the rental unit when these documents were posted to the door given the circumstances described earlier in this decision, I Order that the Application for Dispute Resolution hearing documents posted August 5, 2011, and the 10 Day Notice posted July 11, 2011, were sufficiently served upon the Tenant pursuant to Section 71 of the Act.

In this case the notice was posted on the Tenant's door on July 11, 2011; therefore I find the Tenant is deemed to have received this Notice on July 14, 2011 pursuant to Section 90 of the Act. Accordingly, the effective date of the Notice is July 24, 2011.

Where a tenant is served a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent

or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

The evidence supports the Tenant did not pay the outstanding rent or dispute the Notice; therefore I find the tenancy ended on July 24, 2011. Furthermore, I accept that the Tenant has abandoned her personal property inside the rental unit.

As per the aforementioned I find the Landlord is entitled to regain possession of the rental unit and is required to manage the Tenant's possessions in accordance with Part 5 of the *Residential Tenancy Regulation*; a copy of Part 5 is printed at the end of this decision.

### Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective immediately upon service to the Tenant. This Order is legally binding and must be served upon the Tenant.

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: September 07, 2011.

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Residential Tenancy Branch

***Residential Tenancy Regulation - Part 5 — Abandonment of Personal 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.

### **Notice of disposition**

27 (1) For the purposes of this section:

**"financing statement"** has the same meaning as in the *Personal Property Security Act*;

**"security interest"** has the same meaning as in the *Personal Property Security Act*;

**"serial number"** has the same meaning as in section 10 of the *Personal Property Security Regulation [collateral described by serial number]* made under the *Personal Property Security Act*.

(2) Not less than 30 days before disposing of an item of personal property referred to in section 24, the landlord must

(a) give notice of disposition to any person who

(i) has registered a financing statement in the Personal Property Registry using the name of the tenant or the serial number of the property, and

(ii) to the knowledge of the landlord, claims an interest in the property, and

(b) publish the notice in a newspaper published in the area in which the residential property is situated.

(3) The notice referred to in subsection (2) must contain

(a) the name of the tenant,

(b) a description of the property to be sold,

(c) the address of the residential property,

(d) the name and address of the landlord, and

(e) a statement that the landlord will dispose of the property unless the person being notified takes possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person.

(4) The notice referred to in subsection (2) must be given in accordance with section 72 of the *Personal Property Security Act*[service of statements, notices and demands].

## Holder of a security interest

**28** (1) When a notice referred to in section 27 (2) has been served on a person who holds a security interest, the tenant is deemed to be in default of the obligation secured.

(2) Before taking possession of the property, the person who holds a security interest must pay to the landlord moving and storage charges incurred by the landlord under this Part.

### **Disposal of personal property**

**29** (1) For the purposes of this section, "**administrator**" has the same meaning as in the *Unclaimed Property Act*.

(2) If a landlord has complied with section 25 [*landlord's obligations*], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,

(a) a person referred to in section 27 (2) [*person entitled to notice of disposition*] who has been given a notice as provided in that section has taken or demanded possession of the property,

(b) a person who holds a security interest in the property has taken or demanded possession of the property, or

(c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.

(3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to

(a) reimburse the landlord for his or her reasonable costs of

(i) removing, storing, advertising and disposing of 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.

(4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the

procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.

(5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.

(6) The purchaser of personal property disposed of in accordance with this Part acquires a marketable title free of all encumbrances on payment of the taxes owing in relation to the personal property or the sale.

(7) On the application of an interested person, a court may make an order

(a) prohibiting or postponing disposition of the property under this section on any conditions the court considers appropriate,

(b) determining the right of a person claiming an interest in or right to possession of the property or the right of the landlord to dispose of it, or

(c) that an action be brought or an issue be tried.

[am. B.C. Reg. 234/2006, s. 19.]

### **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.