



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to end this tenancy early and obtain an Order of Possession.

The Landlord attended the hearing and provided affirmed testimony that she personally served the Tenant with the Notice of Dispute Resolution hearing documents on July 25, 2012, while standing in the common shared driveway. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding and I continued in his absence.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order to end this tenancy early?
2. If so, should the Landlord be issued an Order of Possession?

### Background and Evidence

The Landlord submitted that she recently purchased the property which has two separate living accommodations, the main house and a cabin which is the rental unit. Title transferred into the Landlord's name on approximately June 27, 2012 at which time the Landlord moved into the main house and changed the lock on the mailbox to ensure only she had access to the mail.

During the completion of the sale she was advised the current tenant of the cabin has resided there for approximately six years and a security deposit of \$300.00 was transferred to the Landlord in the adjustments of the property sale. Rent is payable on the first of each month in the amount of \$625.00.

The Landlord stated that three days after she moved into the main house the Tenant approached her looking for government issued cheques that were mailed to her address and issued in other people's names. She informed the Tenant that she would be giving

him all mail that was received in his name and all other mail would be returned to sender if it is issued to people who do not reside at their address.

The Landlord advised that two days after informing the Tenant about her decision to return mail that did not belong to anyone at the property she received a telephone call from the previous owner who requested that the Landlord give the government cheques to the Tenant, regardless of whose name is printed on them. She told the previous owner she would not be doing that.

The Landlord asserted that the Tenant and previous owner were involved in some sort of welfare scam that she would not be a party too and this upset the Tenant. She also alleged the Tenant had a problem with alcohol and anger issues and that she had informed the Tenant not to "drunk call her" or contact her.

The Landlord submitted that when the Tenant failed to pay July 1, 2012 rent in full and he failed to follow through with her warning to clean up the cabin area, she personally served him on July 11, 2012 with a 10 Day Notice to end tenancy for unpaid rent and a 1 Month Notice to end tenancy for cause. Then on July 21, 2012, while she was standing in the shared driveway the Tenant drove his car into the driveway erratically, dodging her and her car, and then got out of the car and began yelling at her. She advised that he appeared to be drunk and was very mad at her. She said he made reference about her not giving him the welfare cheques and then he threatened her by saying that it was best for her to leave/abandon her property or he would burn her house down.

The Landlord stated that she was able to walk away from the Tenant and went inside her home and called the police. She said the police told her they could arrest him but that it would make the situation worse. She said the police told her it would be wiser for her to proceed with getting the order of possession for as soon as possible and then they could assist her with keeping him off the property.

The Landlord advised that over the previous couple of days she witnessed the Tenant loading up his possessions into a truck and he left at 9:00 p.m. last night and has not returned. She believes he has moved out of the unit leaving a large amount of debris and possessions behind. I explained that I would attach part 5 of the Regulation to the end of this decision for information about abandoned property.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord.

Upon careful consideration of the foregoing I find the Landlord has proven that the Tenant has engaged in an activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or Landlord of the property and has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.

Next I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. I have accepted that the Tenant has engaged in activity that has ultimately jeopardized the lawful right or interest of the Landlord and has threatened the Landlord's safety. Based on these conclusions I find it would be unreasonable to wait for a one month Notice to End Tenancy to take effect. The relationship is deteriorating and escalating with the possibility for the Landlord suffering further loss or damage. Therefore, I grant the Landlord's application to end this tenancy early.

### Conclusion

I hereby grant the landlord an Order of Possession effective **immediately** after it is served upon the Tenant. This Order is legally binding and must be served upon the Tenant.

After consideration of the circumstances presented to me during this proceeding, I hereby grant the Landlord an Order to serve the Order of Possession to the Tenant by posting it to the door of the rental cabin, pursuant to section 71 of the Act.

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: August 01, 2012.

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Residential Tenancy Branch

## **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.

### **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.