



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RPP

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for the return of the tenant's personal property and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to an Order for the return of personal property?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this tenancy started approximately five and a half years ago. Rent for this unit was \$50.00 per month plus Hydro. Rent was due on the first day of each month.

The tenant testifies that the landlords evicted the tenant from the rental unit. The tenant left his car at the property and had made arrangements to move the car to a friend's place. The tenant testifies that this was a 1995 Lincoln and although it was not insured the tenant intended to use parts from another car to make this car run again. The alternator and air bags were going to be replaced but the rest of the car was in good condition. The interior was all good with a five CD player. There was no rust on the car as it came from Texas. The tenant testifies that he was told by a Ford dealer that the car was worth \$3,999.00 however the tenant only seeks to recover \$2,500.00 due to the work required on the car.

The tenant testifies that the manager of the building called someone to tow the tenant's car and it was taken away for scrap. The tenant testifies that the *Act* states that the landlord has a duty of care when dealing with the tenant's property and the landlord must ensure that the tenant's property is not lost or damaged but is stored safely.

The landlord testifies that the tenant had been evicted four months earlier but did not move out until July 26, 2013. The tenant left a couple of cars on the property and had been told he must remove everything from the property. At the time this car was removed there may have only been this one car. The tenant kept saying he would remove it but failed to do so and has a history of not doing what he says,

The landlord testifies that in August, 2013 the tenant turned up drunk and the police had to be called. The tenant passed out in a cabin and the landlord's husband spoke to the police about the tenant's car still being on the property. The landlord testifies that the

police said that the car had therefore been abandoned and the landlord could tow it from the property.

The landlord testifies that the building manager phoned several tow companies but could not remember the one who came out to tow the car. The landlord testifies that she thought the tenant had been informed that his car was being towed but it turned out that no one had informed the tenant. The landlord eventually determined the tow companies name and found out that they had scrapped the car as they considered it to be un-roadworthy as it was so rusty. The landlord testifies that she called the tenant to inform the tenant what had happened to his car and the tenant became very angry and hung up on the landlord.

The landlord testifies that she had done some research on the value of the car and if it had been in good working order it may have been worth \$1,200.00 but its scrap value would be \$300.00. The landlord testifies she also downloaded similar aged cars of the same make on the internet and found one that was a 1979 that was worth \$2,500.00 a 1996 for \$3,898.00, a 1997 for \$1,995.00 and a 1995 for \$2,073.00. These cars were however in good condition and good running order.

The tenant disputes the landlords claim about the value of the car and testifies that a 1998 Lincoln is worth \$7,000.00 in good running order.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant has applied for the return of his personal property namely this Lincoln car however as the parties agree that this car has since been towed and scrapped then I am unable to Order its return.

The tenant has also applied for a Monetary Order for compensation for the car of \$2,500.00. The tenant has provided no proof as to the value of the car or the condition

of the car. The landlord has testified that the car was uninsured, rusty and not in running order. The tenant has testified that the car was not rusty and would have been in running order after the tenant had put some parts on it from another car in the tenant's possession. As stated to the parties at the hearing the burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

However in this instance the landlord also has a duty of care to any possessions left on the property by the tenant and is required under the part five of the Regulations to treat the car as abandoned property. As such I refer the parties to Part five of these regulations which state:

### **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).

With this part of the regulations in mind I find that the landlord did not store the tenant's car in accordance with the regulations or keep details of how the car was disposed of. I find the landlord did not meet these regulations concerning the tenant's property and have no evidence to show that the car was worth less than \$500.00. Consequently I find the tenant is entitled to some limited compensation for the landlord's failure to comply with the Regulations. However, as I have no proof from the tenant concerning the true value of this car then I must restrict the tenants claim to **\$1,000.00**.

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,000.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: October 01, 2013

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Residential Tenancy Branch

