



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 17, 2014, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent, unpaid utilities, and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony.

### Issue(s) to be Decided

Has the Landlord met the burden to prove each Tenant was served Notice of his Application for Dispute Resolution and Notice of Hearing documents?

### Background and Evidence

At the outset of the proceeding the Landlord submitted that the Tenants we personally served with copies of his Application for Dispute Resolution and Notice of Hearing documents by his friend. The Landlord did not submit a written proof of service document and could not provide testimony as to who was handed the documents or when the service was conducted.

The Landlord indicated that the Tenants vacated the property on different dates. He stated that the last Tenant left on approximately August 15, 2014. He argued that one of the Tenants had left possessions stored inside his shed and requested that I attach a copy of the section of the Regulations that deals with abandoned property. Part 5 of the Regulation has been copied to the end of this decision.

### Analysis

The *Residential Tenancy Branch Rules of Procedure* # 3.5 provides that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that each respondent was served with the hearing package and all evidence, as required by the Act.

In this case the person who conducted the service of Application for Dispute Resolution and Notice of Hearing documents was not in attendance at the hearing and a signed proof of service document was not provided in evidence.

Based on the above, and in absence of the respondent Tenants, I find the Landlord has provided insufficient evidence to prove that each Tenant was served with copies of the Application for Dispute Resolution and Notice of Hearing documents, as required under section 89 of the Act. Accordingly, the Landlord's application is dismissed with leave to reapply.

### Conclusion

I HERBY DISMISS the Landlord's application, with leave to reapply.

This dismissal does not extend any deadlines set out in the *Residential Tenancy 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: September 19, 2014

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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.

### **Repealed**

**31** Repealed. [B.C. Reg. 234/2006, s. 20.]

