



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on January 28, 2015, to end this tenancy early (ET); to obtain an Order of Possession; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony that he served the Tenant notice of this proceeding by posting the hearing documents to the Tenant's door on January 29, 2015.

Section 89(2)(d) of the Act stipulates that if the landlord's application was filed under section 56 [*application for order ending tenancy early*] then the landlord may serve the Tenant by attaching a copy to the door at the address at which the tenancy resides.

Section 79(2)(b) of the Act provides that the director may order that a document has been sufficiently served for the purposes of this Act on a date the director specifies.

Based on the circumstances presented to me during this proceeding, I find that the Tenant was sufficiently served notice of this proceeding and I continued in absence of the Tenant, pursuant to section 72(2)(b) of the Act.

### Issue(s) to be Decided

Has the Landlord met the statutory requirement to end this tenancy early and obtain an Order of Possession?

### Background and Evidence

The Landlord submitted that the Tenant entered into a month to month tenancy that began on January 1, 2005. Market value rent at the beginning of the tenancy was \$603.00 and the Tenant's current rent portion based on an annual subsidy is \$426.00 which is payable on the first of each month. On December 23, 2004, the Tenant paid \$400.00 as the security deposit. The rental unit was described as being a one bedroom apartment located in a high rise apartment building that had 11 stories. The Tenant's rental unit is located on the 4<sup>th</sup> floor.

The Landlord testified that on January 23, 2015, at approximately 10:29 a.m. the resident manager attended the rental unit to install some hooks for the Tenant. When the installation was complete the resident manager turned to leave and the Tenant slashed the resident manager's back with a knife. When the resident manager reached the door he found that it was locked and blocked with a couch. He turned around and the Tenant approached him with a knife in each hand and the Tenant slashed the resident manager in the chest and on his arms before the resident manager could exit the rental unit.

The resident manager was able to exit the unit and call for police. The emergency response team (ERT) attended and after several hours were able to remove the Tenant from the building. The Landlord stated that the police have informed him that the Tenant was taken to a hospital and has been issued a restraining order preventing the Tenant from attending the rental building without police escort. The Landlord did not know when the Tenant would be released from hospital or if he would be going to jail.

The Landlord requested an immediate end to this tenancy so that they could gain access the unit to make it safe. The Landlord was seeking an order of possession in order to remove the Tenant's possessions and place them in storage in accordance with the regulations [Part 5 of the Regulations relating to abandoned property, have been pasted to the end of this decision].

Prior to the conclusion of this hearing I issued the Landlord an Oral Order granting his application and an immediate Order of Possession.

### Analysis

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenants have breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the Tenant has significantly seriously jeopardized the health and safety and a lawful right of the landlord by slashing the resident manager several times with a knife.

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. After consideration of the serious nature of this incident, the bodily harm caused to the resident manager, and the current restraining order placed against the Tenant, I find it would be unreasonable to wait for a 1 month Notice to End Tenancy to take effect; as this tenancy relationship has already escalated to the point of the resident manager suffering bodily harm. Therefore, I grant the Landlord's application to end this tenancy early.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been granted an Order of Possession effective **immediately after service upon the Tenant's Door**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord may withhold the **\$50.00** filing fee from the Tenant's security deposit as full satisfaction of this onetime award.

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: February 16, 2015

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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.
- [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.

**Repealed**

