



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

RPP; FF

### **Introduction**

This is the Tenant's Application for Dispute Resolution seeking an Order that the Landlord return his personal property; and recovery of the filing fee.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenant's documentary evidence were provided to the Landlord by registered mail sent on September 18, 2015.

It was also determined that the Landlord served the Tenant with copies of his documentary evidence by registered mail sent on October 9, 2015.

### **Preliminary Matter: Jurisdiction**

This tenancy ended on September 15, 2013. The Tenant filed his Application for Dispute Resolution on September 15, 2015. Section 60 of the Act provides that an application for dispute resolution must be made within 2 years of the date that the tenancy ends.

I find that the two-year time period commenced on the day following the end of tenancy date and expired on the end of the business day, September 15, 2015. Therefore, I accept jurisdiction with respect to the Tenant's Application.

### **Issues to be Decided**

- Should the Landlord be ordered to return the Tenant's personal property?

### **Background and Evidence**

The Tenant gave the following testimony:

The Tenant testified that he left his scooter at the rental unit when he moved out. He said he went back to pick it up the following day and it was gone. The Tenant testified that he attempted to call the Landlord to arrange picking up the scooter, but the Landlord would not return his calls. The Tenant stated that he also knocked on the Landlord's door, but there was no answer.

The Tenant stated that he e-mailed the Landlord and the Landlord responded that he would not be giving the Tenant's scooter back.

The Tenant testified that the scooter was in excellent condition and had new parts added to it. He estimated that the scooter was worth much more than \$500.00. The Tenant did not provide documentary evidence with respect to the value of the scooter.

The Landlord gave the following testimony:

The Landlord stated that this was a "difficult tenancy". He testified that he lives in the suite above the rental unit and was surprised to see that the Tenant had left his scooter behind. The Landlord stated that the scooter was left for "several days" and that it was raining. The Landlord said he had a responsibility to take care of the Tenant's property and so he put it under cover.

The Landlord stated that the Tenant did not try to call him or knock on his door. The Landlord said that the Tenant did not leave a note on his door. He testified that the first communication he had from the Tenant about the scooter was by e-mail on September 19, 2013, saying that he would be "back in a few days" to get his scooter.

The Landlord testified that the Tenant owed rent and utilities and that he e-mailed the Tenant on September 20, 2013, stating that he would release the scooter once the outstanding utilities (\$75.00) were paid. The Landlord testified that he agreed to waive his right to the outstanding rent. The Landlord said he gave the Tenant until November 15, 2013 to pay the outstanding utilities.

The Landlord testified that he didn't hear anything further from the Tenant, and that on November 6, 2013, he placed an ad in the local paper pursuant to Section 27(2)(b) of Part 5 of the regulations. A copy of the ad was provided in evidence.

The Landlord stated that the scooter was worth far less than \$500.00, and that he could have disposed of the scooter under Section 25(2) of Part 5 of the regulations. The Landlord provided a copy of two ads for used scooters; one for \$300.00 and the other for \$240.00. He stated that he eventually sold the scooter at the end of January, 2014, for \$20.00.

**Analysis**

Section 26 of the Act provides that a landlord must not seize any personal property of a tenant or prevent or interfere with the tenant's access to his personal property unless the landlord has

a court order authorizing the action, or the tenant has abandoned the rental unit and the landlord complies with the regulations.

The Landlord acknowledged that on September 20, 2013, he told the Tenant that he was holding the Tenant's scooter as collateral until the Tenant paid an outstanding indebtedness. I find that this was an illegal act. Section 24 (2) of Part 5 of the regulations provides that a landlord may consider that a tenant has abandoned personal property only if the landlord receives an express oral or written notice from the tenant that he is not returning to the rental property; or if the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably expected to return to the rental property. In this case, on September 19, 2015, the Tenant advised that Landlord that we would be returning to the rental property to pick up his scooter. In answer to the Tenant's September 19<sup>th</sup> e-mail, the Landlord advised the Tenant that he would be holding onto the Tenant's scooter until the Tenant paid an outstanding utility bill, which I find was contrary to the provisions of Section 26 of the Act.

The Tenant seeks return of his personal property but it is no longer in the possession of the Landlord. Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulation or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant did not provide sufficient evidence of the value of his scooter. However, I find that the Landlord did not comply with Section 26 of the Act and that the Tenant suffered a loss as a result of the Landlord's non-compliance. The Landlord provided ads which indicate that used scooters are advertised for \$300.00 and \$240.00. Therefore, I award the Tenant the average of the two amounts, **\$270.00**.

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$270.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced 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: November 06, 2015

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Residential Tenancy Branch

