



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EIGHTLAND PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD FF – Landlord’s application
MNSD FF

Preliminary Issues

The Tenant filed their application for dispute resolution on October 23, 2015 seeking monetary compensation for \$850.00. In the Tenant’s February 26, 2016 evidence submission she included a “Monetary Order Worksheet” indicating she was seeking compensation in the amount of \$20,889.28.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Tenant did not file an amended application and simply listed the additional claim amounts in her evidence. Accordingly, I declined to hear matters which involved any amounts not claimed on the original application. The remainder of the Tenant’s monetary claim is dismissed, with leave to reapply.

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on October 26, 2015 seeking a Monetary Order for damage to the unit, site, or property; for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant.

The Tenant filed on October 23, 2015 seeking a Monetary Order for the return of her security deposit and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord; two witnesses for the Landlord; the Tenant; the Tenant's Agent; and two witnesses for the Tenant. Each person gave affirmed testimony.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

After each person was checked into the hearing the Tenant initially stated she had three witnesses. All witnesses provided me with their telephone number and disconnected from the hearing until it was time for them to present their evidence. Shortly afterwards the Tenant stated she wished to disconnect from the hearing and asked that one of her witnesses be called back into the hearing to act as her Agent. As a result, all of the submissions on behalf of the Tenant were made by her Agent.

Three packages of evidence were served to the Residential Tenancy Branch (RTB) from the Landlord as follows: 42 pages of evidence were received on October 26, 2015 and 2 pages of evidence were received on November 4, 2015. The Landlord affirmed that he served the Tenant with copies of the same documents that he had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's submissions as evidence for these proceedings.

Three packages of evidence and one USB drive were served to the RTB from the Tenant as follows: 10 pages of evidence were received on October 29, 2015; 23 pages of evidence were received on 30, 2015; 73 pages of evidence was received on February 26, 2016; and the USB drive was received on March 1, 2016. The Tenant affirmed that she served the Landlord with copies of the same documents and digital evidence that she had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's submission as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. Has the Tenant proven entitlement to the return of her security deposit?

Background and Evidence

The Landlord and two co-Tenants entered into a written fixed term tenancy agreement that began on April 1, 2015 and was set to expire on March 31, 2016 at which time the tenancy could continue on a month to month basis or another fixed length of time. Rent was payable on the first of each month in the amount of \$1,400.00. On or around March 31, 2016 the Tenant paid \$650.00 as the security deposit and \$200.00 as the pet deposit. The tenancy agreement required the Tenants to pay 50% of the natural gas and electricity.

The written tenancy agreement was amended on June 25, 2015 at which time the female co-Tenant (the applicant/respondent in this dispute) was listed as the only Tenant with the exact same terms as listed above.

The rental unit was described as being a self-contained suite located in the upper level of a single detached house. The house was built in approximately 1968 and the Landlord has owned the house for approximately 8 years. The rental unit consisted of: 3 bedrooms; 1 bathroom; kitchen; dining room; living room; and laundry room.

The Landlord testified he had filed a previous application and the September 21, 2015 Decision granted him an Order of Possession for unpaid rent and a Monetary Order for September 2015 unpaid rent. The Landlord said the Tenant provided the Landlord with her forwarding address on October 2, 2015.

The Landlord submitted he was a property manager in two separate cities and when he served the Tenant with the Order of Possession he told her she had to be vacated by noon on September 30, 2015. He said it was during that conversation when he had asked the Tenant to do the walk through at noon on September 30, 2015.

The Landlord stated the Tenant was still moving out on October 1, 2015 and when he attended in the afternoon he said he told the Tenant he had to leave town at 3:00 p.m. to manage a different property in the other city. The Landlord confirmed he had not served the Tenant a notice of two dates and times to conduct the inspection or a final opportunity for inspection in writing at that time. He said he told her verbally it needed to be completed before he left at 3:00 p.m.

The Landlord asserted he returned to the rental unit sometime on October 2nd, 2015. He said he found the keys had been left inside the rental unit along with the Tenant's note with her forwarding address.

On October 6, 2015 the Landlord sent the Tenant a Notice of Final opportunity to attend an inspection on October 13, 2015. That notice was sent via registered mail. The Tenant and her Mother, TT Witness 2, attended the inspection on October 13, 2015.

The Landlord presented the following oral evidence regarding his application for compensation for the unpaid utilities; cleaning costs; and repairs to the rental unit as follows:

- 1) Natural gas and hydro costs less \$150.00 which was paid by the Tenant towards utilities on June 16, 2015, The Landlord asserted he left photocopies of the bills each month in the mailbox and the Tenant simply refused to pay for them. The Landlord was not able to add the total amounts up he was claiming and stated the amounts listed on the monetary order worksheet matched the Tenant`s share of the bills submitted into evidence.
- 2) \$1,670.00 for the removal of debris, abandoned furniture, and cabinets that were left behind; replacement and installation of the missing curtain rods; cleaning; replacement lock; and landfill fees as per the invoice dated October 21, 2015 provided in evidence.
- 3) \$700.00 for loss of rent for October 1 – 14, 2015 as the rental unit was not re-rented until October 15, 2015.
- 4) \$10.50 for Canada Post registered mail costs to send the Tenant the Notice of Final Inspection.

The Tenant`s agent (the Agent) argued the Tenant had not previously been served with copies of the utility bills despite her repeated requests for copies. The Agent confirmed copies of the bills were received in the Landlord`s evidence.

The Agent testified she was at the rental unit on September 30, 2015 helping the Tenant move out and clean. She stated when she was assisting the Tenant move out on September 30, 2015 the following people were there: the Tenant and the Tenant`s boyfriend.

The Agent said the Tenant had one last load of possessions inside the rental unit when she left the keys on the kitchen counter and the door unlocked while she went to offload the truck. The Agent argued the door was locked when the Tenant returned and she was not able to retrieve the last load of her possessions. She asserted the Tenant returned to the rental unit a few days later and saw that her possessions from the last load were thrown into a garbage bin.

The Agent stated she attended the rental unit on October 2, 2015 and a female answered the door. The Agent said she assumed the female was the new tenant who had moved into the rental unit.

LL Witness 1 testified he was the tenant in the lower rental unit. He stated the Landlord would leave each tenant copies of the utility bills in the Tenant's shared mailbox each month. He said the Tenant usually did not pick up her mail or the bills left behind by the Landlord so he would deliver them to her door.

LL Witness 1 said the Tenant moved out on September 30, 2015 and throughout that night into the early morning of October 1, 2015. He said he heard them moving the heavy furniture out. LL Witness 1 said he did not physically see the Tenant at the rental unit after September 30, 2015 although he had heard people moving her stuff out.

LL Witness 2 testified he operated his own business and does work for the Landlord. He stated he was asked to do work at the rental unit in October 2015 as per his invoice. He stated he recalled starting that job on October 8, 2014. HE stated there had been a lot of junk left behind and there were dirty foot prints inside. He said the deck was full of junk, old dressers, and with all of that stuff left behind he filled his 14 foot dump trailer. He stated all the curtain rods had been removed so he had to purchase and re-install the curtain rods.

LL Witness 2 stated he began to work on the rental unit on October 8, 2015 and the work took him 4 days. He said his wife had been at the rental unit and she assisted him with some of the cleaning. He said it appeared that someone had gone in and messed it up as there were footprints inside. LL Witness 2 asserted his invoice was issued after the work was completed

TT Witness 1 testified he assisted the Tenant with moving out; however, he could not recall the exact date. He said the following people were at the rental unit during the move out: the Agent; the Tenant; the Tenant's kids; and two of the Tenant's female friends with the initial "M" and "D".

TT Witness 1 stated they had cleaned the rental unit to the best of their ability and he recalled them sweeping up and leaving all keys behind for the new locks. TT Witness 1 said he recalled moving all night long and their last load was taken around 5:00 in the morning. He said they had left some things on the porch that they had planned to pick up and when they returned about 2 hours later the items were already thrown into a trailer.

TT Witness 2 testified she was at the rental unit assisting the Tenant move out for a short time. She said the following people were at the unit helping: the Tenant; the Tenant's boyfriend (TT Witness 1); the Agent; and the Tenant's female friend with the initial "C".

TT Witness 2 asserted the Tenant took her final load out of the rental unit on September 30, 2015 at 5:00 p.m. She argued the Tenant had left her last load in the driveway and when the Tenant returned to retrieve her last load the Landlord had already thrown out her possessions. She argued the Tenant's property that had been thrown out was "legitimate property".

TT Witness 2 submitted she attended the move out inspection with the Tenant on October 13, 2015. She confirmed the Tenant refused to sign the move out report presented by the Landlord. She argued the new tenant had already moved into the rental unit and was sleeping when they arrived. She asserted the new tenant had been in the rental unit for 1 ½ weeks prior to the move out inspection they attended on October 13, 2015.

TT Witness 2 asserted when she attended the move out inspection on October 13, 2015 the rental unit had been cleaned and freshly painted. All of the new tenant's furniture was inside along with her dog.

The Landlord confirmed he had allowed his new tenant to move in some of her possessions into the rental unit. He argued he had not given the new tenant possession of the rental unit and had not given her keys prior to October 15, 2015. Upon further clarification, the Landlord stated his new tenant was allowed to move in about 8-10 boxes and a chesterfield and she was given access to do so a couple times when the Landlord was at the rental unit.

The Landlord stated he was surprised these matters had come to this hearing. Upon further clarification the Landlord said he was surprised the Tenant actually showed up for the move out inspection.

The Landlord presented evidence pertaining to the following items that were listed on his Monetary Order Worksheet:

\$143.72	Natural Gas amounts comprised of \$28.41 + \$16.59 + \$29.94 + \$23.08 + \$24.71 + \$20.99;
\$711.54 (150.00)	Hydro amounts comprised of \$146.95 + \$315.89 + \$248.70 Less the Tenant's June 16, 2015 payment towards utilities

(307.60)	Less the amount the Landlord owed the Tenant for paint supplies
\$ 10.50	Canada Post charges
\$1,670.00	Cleaning and repair costs as per the contractor's invoice
\$700.00	Loss of rent for October 1 – 15, 2015.

No oral submissions were made regarding the amount claimed at item 7 on the Landlord's Monetary Order Worksheet. The work sheet had a description written on the bottom of the page indicating only \$900.00 of the \$1,300.00 rent was paid for July 2015.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Rule of Procedure 7.4 stipulates evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Landlord failed to present evidence regarding an item listed at number 7 on his Monetary Order Worksheet relating to July 2015 rent. As a result the Agent was not provided an opportunity to dispute that claim. Accordingly, I find the evidence relating to any unpaid rent for July 2015 was not properly present. Therefore, the Landlord's claim for short payment of July 2015 rent is dismissed, without leave to reapply.

The tenancy agreement stipulated the Tenant was required to pay 50% of the natural gas and electricity utility bills. The Agent did not dispute the amounts being claimed for utilities by the Landlord and did not dispute that the tenancy agreement required the Tenant to pay those utilities. Rather, the Agent argued the Tenant had been given copies of the bills. She did however confirm the Tenant had received the invoices in the evidence package.

I found LL Witness 1 to be credible when he testified the Landlord left copies of the utility bills in the mailbox for both tenants and the upper Tenant simply did not pick of the bills addressed to her. I further accept that the LL Witness 1 had delivered to the Tenant not only the utility bills but also other mail that was addressed to the Tenant and left in the mailbox for days after delivery.

Based on the above, I find there was sufficient evidence to prove the amounts claimed of \$143.72 for natural gas plus \$711.54 hydro less the \$150.00 previously paid by the Tenant. Accordingly, I grant the claim for unpaid utilities in the amount of **\$705.26**, pursuant to section 67 of the *Act*.

The undisputed evidence was the tenancy ended two days upon service of the Order of Possession. That Order of Possession was served upon the Tenant on September 28, 2015. Based on the evidence before me I find the tenancy ended September 30, 2015 in accordance with the Order of Possession and the Tenant over held the rental unit for one day when she left the rental unit locked up, with one pile of her possessions on the deck, at 5:00 a.m. on October 1, 2015.

There were inconsistencies in the oral submissions presented by the participants and witnesses during this proceeding, excluding LL Witness 1 and TT Witness 1. After review of all of the documentary and digital evidence before me, I found LL Witness 1 and TT Witness 1 to be most credible given the circumstances presented to me at the hearing.

The submissions from the Agent and TT Witness 2 were inconsistent. For example the Agent argued the Tenant finished moving out in the evening of September 30, 2015. TT Witness 2 argued the move ended at 5:00 p.m. on September 30, 2015. TT Witness 1 stated they moved all night long with their last load leaving around 5:00 a.m. which matched the testimony submitted by LL Witness 1 who resided in the unit directly below.

The Agent submitted the Tenant left her last load of possessions inside the rental unit and when she returned the possessions were in a dumpster. I am not convinced the Tenant left the door unlocked and was coming right back for the last load when she had placed all keys on the counter with her note listing her forwarding address. TT Witness 2 submitted there was a load left behind and that last load of possessions was left in the driveway.

TT Witness 1 submitted they had left a pile of possessions on or at the deck or porch area which they had intended on coming back to get. He submitted when they returned 1 to 1 ½ hours later those possessions had already been thrown into a trailer. LL Witness 2 submitted there had been a pile of possessions left on the deck which he had loaded them into his trailer which matched the submissions of TT Witness 1.

In addition, I found the evidence submitted by LL Witness 1 to be inconsistent and questionable given the digital evidence that was before me. LL Witness 1 submitted he did not attend the rental unit on February 8, 2016 and he worked at cleaning the rental unit, removing cabinets, and installing curtain rods for 4 days. LL Witness 1 testified he issued his bill when the work had been completed. However, the Tenant had submitted evidence of one cabinet still being on the deck long after that invoice had been allegedly issued.

Upon review of the digital evidence, I do not accept there was 4 days of work required to ready this rental unit for the next tenant's occupation. Also, I do not accept the Landlord waited until October 8, 2015 to have this rental unit cleaned and ready for his new tenant.

Rather, I find either the Landlord himself or someone else at his request, attended the rental unit on October 1, 2015 to ensure the rental unit was ready to pass possession to the new tenant shortly afterwards. I make this finding in part due to the inconsistencies in the submissions presented on behalf of the Landlord. The Landlord had attended the rental unit on September 30, 2015 and saw the Tenants were moving out and were not quite finished by 3:00 p.m. when he attended. Therefore, it is reasonable to conclude the Landlord arranged for his contractor to attend the rental unit on October 1, 2015 to ready the unit for his new tenant.

There was no indication the Tenant would be returning to access the inside of the rental unit as she had left the keys inside, the door locked, and her forwarding address was left on the counter. That being said, I accept there had been a pile of possessions left in a neatly arranged pile on the ground level porch area on the morning of October 1, 2015 which the Tenant intended to retrieve.

I find the Landlord was required to treat the possessions that were left behind as abandoned property pursuant to Part 5 of the Regulations, which has been copied to end of this Decision.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

I accept the Tenant's submissions there was already a tenant living in the rental unit at the time of the inspection and as early as two days after she vacated the rental unit. Therefore, I give limited evidentiary weight to the move out inspection report that was

completed October 13, 2015. By his own submission the Landlord was surprised the Tenant even showed up for the inspection or that these matters escalated to this point.

I conclude based on the submissions before me, that the Landlord was simply covering his tracks by sending out the final notice of inspection by registered mail, six days after the tenancy ended, anticipating the Tenant would not show up. I find the Landlord had found a replacement tenant who had already occupied rental unit prior to the October 13, 2015.

In regards to the Landlord's claim of \$1,670.00 for the contractor's invoice and the credit amount of \$307.60 the Landlord submitted he owed the Tenant for paint supplies, I find there was sufficient evidence to prove there were some foot prints on the floor that needed to be wiped up. This evidence was provided in the Tenant's digital evidence taken when she was moving and supported by the Contractor's testimony. Given the short timeframe the Tenant had to move out I find it reasonable to conclude she may not have had time to clean the inside of the oven. Therefore, I find there was sufficient evidence to prove there was 3 hours of cleaning required to be completed. As such I award the Landlord cleaning costs of \$90.00 (3 x \$30.00 per hour) less the \$307.60 owed to the Tenant for painting leaves a credit balance owed to the Tenant of **(\$217.80)** (\$90.00 - \$307.60).

In the presence of the Tenant's digital evidence, and based on my finding above that the Landlord was required to treat the Tenant's remaining possessions as abandoned pursuant to the Regulation, I find the Landlord provided insufficient evidence to prove the remaining items listed on the Contractor's invoice of (\$1,670.00 - \$90.00). Accordingly, the balance of \$1,580.00 is dismissed without leave to reapply.

As indicated above, I find the Landlord submitted insufficient evidence to prove when the replacement tenant occupied the rental unit. As such, I find there was insufficient evidence to prove the Landlord suffered a loss of rent for October 1 – 14, 2015 as claimed. Accordingly, the claim for loss of October 2015 rent is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$50.00**, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$400.00 security or pet deposit since February 14, 2015.

I find this monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposit as follows:

Unpaid utilities less payment	\$ 705.26
Cleaning less painting supplies owed Tenant	-217.80
Filing Fee	<u>50.00</u>
SUBTOTAL due to Landlord	\$ 537.46
LESS: Pet Deposit \$200.00	-200.00
LESS: Security Deposit \$650.00	<u>-650.00</u>
Offset amount balance of Tenant's Deposits	<u>(\$ 312.54)</u>

Section 38(3) of the *Act* stipulates that a landlord may retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid.

There was evidence before me that the Landlord had been issued a Monetary Order of \$1,400.00 unpaid rent for September 2015, which remains unpaid by the Tenant. Therefore, I find the \$312.54 balance of the Tenant's deposits may be retained by the Landlord and applied to the \$1,400.00 monetary order, pursuant to section 38(3) of the *Act*.

As per the above findings, I conclude the Tenant was not entitled to the return of her security and pet deposits. Furthermore, the Tenant had filed requesting to recover the cost of her filing fee; however, the Tenant did not pay a filing fee she was granted a fee waiver. Accordingly, I dismiss the Tenant's application.

Conclusion

The Landlord was partially successful with his application and was awarded monetary compensation of \$537.46 which was fully offset against the Tenant's security and pet deposits. The Tenant's application for the return of her security deposit and filing fee was dismissed, without leave to reapply.

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: March 14, 2016

Residential Tenancy Branch

Regulations - 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.