



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Portland Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC,O, RPP

### Introduction

This was an application by a tenant for compensation representing the value of many of his personal property disposed of or lost by the landlord, as well as an order for recovery of his property. Only the tenant attended the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to compensation?

### Background and Evidence

The tenant testified that he sent his dispute resolution package by registered mail to the landlord on December 22, 2016. I therefore find that the landlord was deemed to have been served with the tenant's application on December 27, 2016.

The tenant testified that his tenancy began approximately on two years ago. On June 30, 2016 he fell out of a window in his unit sustaining serious injuries. He was hospitalized for several weeks. He left the door locked when departing for the hospital. Shortly after arrival at the hospital the tenant testified that he called management of the landlord and requested they secure his room and property. A day or so later the landlord contacted him and requested permission for the SPCA to enter his room to board his dog. He agreed. While in the hospital he was informed by other residents that several members of the landlord's staff had entered his room and were disposing his property. He returned back to his unit on July 24, 2016 and found it in chaos with his belongings strewn about. He noticed much of his valuable possessions and property were missing. He met with N. a manager of the landlord's who admitted to throwing out his property.

The tenant filed a police report and as his room was not liveable the landlord eventually found him substitute accommodation.

The tenant made a detailed inventory of all the personal property missing and valued each and every item either by providing receipts or through searching the internet for the replacement items. He also included a claim for expenses he sustained with Telus for the replacement cost of an internet router and TV PVR as the landlord had disposed of them. That list totalled **\$ 18,617.17**. The tenant testified that he tried to locate his dog through the SPCA but was advised that they had no record of apprehending or boarding it. The tenant requested a monetary Order equivalent to the value of his missing property destroyed by the landlords and the expense incurred to Telus, value of his dog as well as suffering he incurred because of the loss of his quiet enjoyment..

### Analysis

The landlord failed to attend the conference call hearing.

I find that the tenant gave his evidence a clear and credible fashion. I accept his evidence unconditionally in this hearing.

I find that the tenant had not ended his tenancy or abandoned his property but rather was hospitalized as a result of an accident. Furthermore the tenant was prudent in informing the landlord shortly after his hospitalization of what had happened to him and requesting they secure his property.

Even if the landlord believed he had abandoned his property the Section 24 and 25 of the Regulations made pursuant to the Residential Tenancy Act prescribe the procedure that a landlord must follow regarding the abandonment of tenant's property.

## **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). (my emphasis added)

At common law a landlord becomes the bailee of the tenant's property left behind and the Regulations merely prescribe the procedure that they must follow. ( *Bello v. Ren*, BC Supreme Court 2009.) Whether the tenant could be considered to have abandoned his property or not, it's clear that the landlord either was negligent in not maintaining his

property, wilful or negligent in disposing of it, or did not follow the prescribed procedure in that they disposed of his property less than thirty days after he has hospitalized. They did not store them for another sixty days nor did they make any inventory of them.

I find that based upon the tenant's description of the property and inventory tendered as evidence, a reasonable person would determine that his property was valuable and easily exceeded the value of \$ 500.00. Accordingly the landlord was at least in breach of section 25 of the Regulations. More compelling however, I find that the tenant advised the landlord that he wished them to secure his unit, and that the landlord's manger subsequently admitted to disposing of it. As I have found that pursuant to the 2009 Supreme Court decision of *Bello v. Ren*, a common law relationship of bailment existed between the landlords and tenant accordingly the measure of damages must follow suit. On page 7 and 8 of *Bello v. Ren* the Honourable Madam Justice Fenlon found:

15] Section 91 of the *Residential Tenancy Act* provides that: "except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia." Absent abandonment, the Landlord did not have statutory authority to remove Mr. Bello's goods from his apartment. The Landlord was therefore a bailee at common law and owed a duty of care to Mr. Bello. Disposing of Mr. Bello's goods by taking them to the dump, particularly when he knew that Mr. Bello wanted those goods and was trying to retrieve them, is a gross breach of that duty.....

[16] The principle of "*restitutio in integrum*" governs damages for breach of a bailee's duty of care at common law. In *Ashton v. Strata Corp.* VR524, [1999] B.C.J. No. 2429 (Prov. Ct.), a case of breach of bailment for reward.....

[49] The underlying principle in awarding damages is *restitutio in integrum* - to place the injured Party in the position he was in before the damage occurred, as best as can be done. In determining the proper measure of damages, the award must be reasonable both to the plaintiff and to the Defendant.....

[18] In summary, at common law damages are awarded to put the injured bailor in the position he was in before the goods were lost or damaged. In the absence of contract, the most the bailor can recover is replacement cost or repair cost.

The tenant produced a detailed list of his personal property in which he valued the actual replacement cost of each item. Those amounts were not contested by any evidence to the contrary. In fact the landlord failed to attend the hearing. In *Powell v. British Columbia (Residential Tenancy Branch)* a 2015 decision of the BC Supreme Court, the Honourable Madam Justice Bruce, considered how much scrutiny an arbitrator must give to the stated quantum of loss in an unopposed application.

[60] Addressing the quantum of loss, Arbitrator Molnar articulated the undisputed facts that Ms. Blais had lost an opportunity to sell her trailer for \$25,000 and later mitigated her loss by selling it for \$5,000. In addition, he referred to other expenses incurred as a result of the unlawful eviction notice, including the cost of removing the structures as ordered by the landlord, the legal fees expended in regard to the removal of these structures, and the filing fee. **Assessing the loss was a simple mathematical calculation based on the proven facts.** (My emphasis added)

As I have already found that the applicant is a credible witness I accept his inventory and calculation of his loss at the amounts he claimed to be \$ 18,617.17. I can not award him for the loss of his dog as it is not possible to value that item as property. Furthermore I cannot award the tenant any compensation for the breach of the landlord's covenant of quiet enjoyment as he has not properly made this claim. He may bring such a claim separately and include the loss of his dog as part of any such claim. Accordingly I have awarded him the sum of **\$ 18,617.17.**

### Conclusion

I have granted the tenant a monetary Order amounting to **\$ 18,617.17.** If the amount is not paid then the Order may be enforced in the Small Claims Court of BC. This Order and decision must be served on the landlord. I do not make any order as to the recovery of the tenant's filing fee. The tenant may bring a future claim for compensation for his loss of quiet enjoyment which may include the disposal of his dog unless he is able to locate it in the interim.

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: January 17, 2017

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Residential Tenancy Branch