



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

#### **MNDC**

### Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord confirmed receipt of evidence with the hearing documents, given in June 2016.

An additional five page evidence submission provided to the Residential Tenancy Branch (RTB) on December 20, 2016 was received by the landlord on the same date. That evidence was set aside as the tenant did not serve the landlord at least 14 days prior to the hearing. The tenant was at liberty make oral submissions in relation to those documents.

The tenant confirmed receipt of the landlords' 45 page evidence submission; served in accordance with the Rules of Procedure.

The application indicated a monetary claim in the sum of \$15,030.00.

The details of dispute section of the application set out further claims. The tenant requested compensation in the sum of \$1,400.00 (May and June 2016 rent) and return of all her personal property. The tenant set out a third option; that the landlord return all of the personal property not destroyed or given away, plus rent paid for May and June 2016 and the monetary value of non-returned property.

The three options included on the tenants' application were reviewed. It was explained that there is no way to establish what, if any, damage might occur to personal property that may currently be held by the landlord and returned to the tenant. The tenant was told that if personal property is held by the landlord it could be ordered returned to the tenant and any loss could only be established once the property was returned.

The application was amended to include a request for return of the tenants' personal property, in accordance with section 4.2 of the Residential Tenancy Branch Rules of Procedure, which provides:

#### ***4.2 Amending an application at the hearing***

*In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.*

#### Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act?

Must the landlord be ordered to return the tenants' personal property?

#### Background and Evidence

The tenancy commenced on January 1, 2016. This was a two year fixed term tenancy. The tenancy ended effective June 16, 2016 as the result of the landlords' successful application to end the tenancy early.

The landlord obtained an order of possession and served the order to the tenant on June 13, 2016. A copy of the decision and order of possession and monetary order in the sum of \$100.00 issued on June 9, 2016 was supplied as evidence.

The parties agreed that on June 15, 2016 the tenant had a moving truck at the rental property and that many belongings were removed. The tenant and landlord confirmed that they had agreed the tenant could return to the property on June 19, 2016 to remove the remaining personal property. The landlord then changed her mind and told the tenant the gate the property would be locked and that the tenant should not return.

The tenant has asked that the following items be returned, or that compensation be paid:

Mahogany wood 20 X 18 planks	9,000.00
Douglas fir 2 X 18 planks	432.00
Fig tree	120.00
2 citrus trees	105.00
Bay laurel	80.00
Giant zygocactus	75.00
Hoya	95.00
2 gooseberry bushes	70.00
Wisteria	50.00
4 rare clivias	225.00
2 orchids	50.00
1 coffee plant and Christmas cactus	12.00
12 self-watering plant pots	120.00
Jiffy pots and other pots	50.00
3 antique forged iron hanging basket stand	150.00
White salad bowl	55.00
Native stick game	200.00

Green flower glass with grid top	50.00
Coffee maker	180.00
2 bags coffee	27.00
Spin mop and bucket	45.00
Broom and dust scoop	15.00
Convection infrared oven	290.00
Truck battery	220.00
12 fence posts	240.00
Greenhouse piping	144.00
Firewood for 5 days	30.00
2 bags potting soil and 3 bags manure	40.00
Fertilizer	80.00
Composter	110.00
Compost pails	75.00
Garden tools	20.00
Wheelbarrow	100.00
Dolly missing 1 wheel	75.00
3 Garden hose	245.00
125 bricks	125.00
Stove board	90.00
Shelving	25.00
Green metal chair	35.00
Screen door	175.00
Bird feeder	150.00
Metal map with opaline globe	50.00
2 jars sole, jars, salt	80.00
Kitchen gizmos from Europe	25.00
<b>TOTAL</b>	<b>\$13,630.00</b>

The tenant had included a claim requesting return of two months' rent. The tenant said that portion of the claim was not as critical as return of the property. The tenant chose to withdraw the request for return of rent.

The tenants' son testified that he was at the property on June 16, 2016 to assist with the move. The tenants' advocate placed a list of the tenant's property before the witness; asking if he recalled seeing those items. At this point I interjected and asked that the witness; without the aid of the list, recall any personal property that was left at the unit on June 16, 2016.

The witness provided affirmed testimony that there were plants, the coffee maker, some wood, dishes, and crates with plants, glasses and crock pots. The witness said that there were mostly kitchen items that remained in the rental unit.

The landlord responded that many of the items left on the property by the tenant remain and can be retrieved. The landlord provided photographs of the truck used by the tenant and items that had been left in the rental unit. The landlord said the coffee was likely thrown out with other food that was rotten. The coffee maker was disposed of as it was very dirty. The oven the tenant claims is worth \$290.00 is at the property and has a price tag of \$29.95. Many of the plants are left at the property. The landlord did throw out some broken jars, the jiffy pots and any plant that was dead.

In response to the advocate the landlord said that the plants have remained where the tenant had left them outside.

The parties agreed that the mahogany wood had originally been placed in an outbuilding that was eventually used by the landlord as a chicken coop. The tenant said the wood was not removed and had remained in that building. The landlord said that the wood is no longer in the building and that she assumed the tenant had removed that wood when the moving truck was at the property. The landlord said there is some wood that the tenant left outside.

The parties both agree that the tenant should not return to the property. During the hearing an attempt was made to have the parties agree to a date and time the tenant's agent could attend to retrieve the personal property. The tenant could not offer a time or method of retrieval. It was agreed that the tenant will make arrangements, through an agent, to retrieve the personal property that remains on the property. The landlord was amenable to this arrangement.

### Analysis

I find, pursuant to section 44(f) of the Act that this tenancy ended effective June 16, 2016 when the tenant left the property for the final time. However; while the landlord had obtained an order of possession the landlord had not obtained a writ of possession. The landlord told the tenant not to return to the property and the tenant accepted that direction and within several weeks made this application requesting return of the personal property.

Section 24 of the Residential Tenancy Regulation sets out when a landlord may consider personal property abandoned:

**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.*

(Emphasis added)

I find that the tenant did not abandon the personal property, but that the tenant was denied access to retrieve the property. The tenant did not expressly say she would not return; in fact the tenant said she wanted to return on a specific date to retrieve the balance of her property and was denied that opportunity by the landlord. The landlord did not have the legal right to deny the tenant access to her property as the landlord had not obtained a writ of possession. If a writ of possession is obtained then a landlord may hire a court approved bailiff to remove a tenants' personal property.

Due to the time the tenant had to wait for a hearing, a period of almost seven months has passed since the tenant was last at the property. The landlord has confirmed that much of the tenants' personal property remains.

The tenant has the burden of proving that the wood was not removed previously. I find that the tenant has failed to prove, on the balance of probabilities that any mahogany or Douglas fir wood remained on the property after June 16, 2016. The tenant did not supply any evidence, such as photographs or witness statements in support of the submission that the wood remained in the building. There is some wood outside, which the landlord says belongs to the tenant.

The landlord has confirmed that jars, the coffee maker, coffee and plants that were dead have been disposed of. Therefore, as the tenant was barred from accessing her personal property which was disposed of by the landlord, I find that the tenant is entitled to nominal compensation in the sum of \$50.00 for those items. The landlord did not have the right to deny the tenant the opportunity to retrieve that property. I have rejected the claim that the coffee maker was valued at \$180.00. There was no evidence before me setting out a comparable cost or the age of the coffee maker.

I find that no later than January 31, 2017 the tenant must contact the landlord to arrange removal of the balance of her personal property. Removal must occur on one occasion only.

Pursuant to section 62(3) of the Act I order the landlord to fully cooperate with the tenant, to allow an agent for the tenant access, on one occasion only, to retrieve items left on the property by the tenant. Any personal property not removed by February 28, 2017 may be considered as abandoned.

Based on these determinations I grant the tenant a monetary order in the sum of \$50.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court. This sum may be set off against the tenants' debt to the landlord.

The balance of the tenants' claim for compensation is dismissed with leave to reapply.

Conclusion

The tenant is to arrange a date and time to retrieve the personal property from the landlord, as ordered.

The tenant is entitled to compensation in the sum of \$50.00 for jars, the coffee maker, coffee and plants that were dead. The balance of the monetary claim is dismissed with leave to reapply.

The tenant withdrew the claim for May and June 2016 rent.

This decision is final and binding and 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 05, 2017

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Residential Tenancy Branch