



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNETC, MNDCT, RPP

Introduction:

A hearing was convened on January 08, 2021 in response to an Application for Dispute Resolution filed by the Applicant in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss, for compensation related to a Two Month Notice to End Tenancy for Landlord's Use , and for the return of personal property. As there is no suggestion that the Applicant was served with a Two Month Notice to End Tenancy for Landlord's Use, I will not be considering whether he is entitled to compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use .

The hearing on January 08, 2021 was adjourned for reasons outlined in my interim decision of January 08, 2021. The hearing was reconvened on March 09, 2021 and was concluded on that date.

In my interim decision of January 08, 2021, I gave the Applicant authority to re-serve the Application for Dispute Resolution and evidence the Applicant submitted to the Residential Tenancy Branch prior to January 08, 2021 to the Respondent. The Applicant stated that these documents were mailed to the Respondent on January 19, 2021. The Respondent acknowledged receipt of these documents and the evidence was therefore accepted as evidence for these proceedings.

As stated in my interim decision of January 08, 2021, the evidence submitted to the Residential Tenancy Branch by the Respondent in January of 2021 was accepted as evidence for these proceedings.

On January 24, 2021 the Applicant submitted additional evidence to the Residential Tenancy Branch. The Applicant stated that most of this evidence was previously served

to the Respondent. He stated that any new evidence in that evidence package was served to the Respondent on January 26, 2021. The Respondent acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On February 19, 2021 the Respondent submitted additional evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was mailed to the Applicant on February 19, 2021. The Applicant stated that this evidence was personally served to him on February 19, 2021. As Applicant acknowledged receiving the evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

I note that both parties have submitted a large amount of evidence. Although a large amount of the evidence is not directly related to the issues before me, all of the evidence has been reviewed. The evidence is only referenced in this decision if it is directly relevant to my decision.

Preliminary Matter

At the start of the hearing on March 09, 2021 each participant advised that they were alone in the room.

After I asked the Respondent a question during the hearing on March 09, 2021, I clearly heard a female voice respond to that question. I asked the Respondent who was in the room with him and he replied that he was alone.

I asked the Respondent another question later in the hearing on March 09, 2021 and I again clearly heard a female voice respond to that question. I again asked the Respondent who was in the room with him and he replied that he was alone.

I told the Respondent that I heard a female respond to my question and he replied that he is alone, with his television on.

As I heard a female voice directly reply to questions presented to the Respondent, I find that the Respondent was not alone in the room for at least a portion of the hearing on March 09, 2021. I find his suggestion that the television was on does not explain what I

heard, as I only heard the female voice on the two occasions when the voice responded directly to my question.

I find that the Respondent was not being truthful when he reported being alone in the room during the hearing on March 09, 2021. I therefore did not find him to be a particularly credible witness.

I also did not find the Applicant to be a particularly credible witness. As noted in my analysis, I find that his testimony was, on occasion, in conflict with more reliable evidence.

Issue(s) to be Decided:

Is the Applicant entitled to compensation for losses related to how this tenancy ended, including missing property?

Is there a need to issue an Order requiring the Respondent to return personal property?

Background and Evidence:

The Applicant stated that:

- He is the son of the Respondent's former fiancé;
- He entered into a verbal tenancy agreement with the Respondent;
- He agreed to pay monthly rent of \$500.00 to the Respondent;
- He paid rent, in cash, for May, June, July, and August of 2020;
- He paid his rent on, or near, the first day of each month, depending on the availability of the Respondent;
- A security deposit was not paid;
- Prior to him moving into the rental unit, the unit was being rented as temporary vacation housing;
- He moved into the rental unit in May of 2020;
- He stopped living at the rental unit on August 29, 2020;
- On August 29, 2020 he stayed overnight at the hospital;
- The police contacted him while he was at the hospital to discuss allegations made by a neighbour;
- On August 29, 2020 the police gave him an undertaking that prohibited him from attending the neighbour's residence;
- The police undertaking did not prevent him from returning to the rental unit in August of 2020;
- The police told him they did not have authority to end the tenancy with the Respondent;
- He was released from the hospital on August 30, 2020;
- He stayed with the Respondent on August 30, 2020;
- Neither the Applicant nor the Respondent gave written notice to end the tenancy;

- The Respondent would not permit him to return to the rental unit to recover his property;
- The Respondent told him that police would be called if he returned to the rental unit;
- At his request, the Respondent went to the rental unit on August 30, 2020 to recover some of his belongings; and
- A large amount of his property was left in the unit after August 30, 2020.

The Respondent stated that:

- The Applicant is the son of his former fiancé;
- His former fiancé was having difficulty with the Applicant;
- As a favour to his former fiancé, he agreed to let the Applicant live in the rental unit;
- The Applicant was living in the unit as his guest, and was not required to pay rent;
- Prior to the Applicant moving into the rental unit, the Respondent's nephew was using it as an office;
- His nephew is once again using the unit as an office;
- The Respondent has never paid rent to him for the unit;
- A security deposit was not paid;
- The Applicant moved into the rental unit in May of 2020;
- Neither the Applicant nor the Respondent gave written notice to end the tenancy;
- On August 29, 2020 he communicated with a neighbour, who was reporting the Applicant was making threatening and racist remarks;
- On August 29, 2020 he received a telephone call from the police, advising they were attempting to locate the Applicant for the purposes of arresting him;
- On August 29, 2020 the police told him that the Applicant was no longer permitted to reside at the rental unit;
- The Applicant stayed with him on August 29, 30, and 31 of 2020;
- He did not tell the Applicant he was not permitted to return to the unit to recover personal property;
- He did not tell the Applicant the police would be called if he returned to the rental unit;
- He went to the rental unit on August 30, 2020, at the request of the Applicant, to retrieve some of the Applicant's personal belongings;
- A large amount of the Applicant's property was left in the unit after August 30, 2020; and
- He changed the locks to the unit on August 31, 2020.

The Respondent submitted a letter from a neighbour, in which the neighbour declares that they were under the impression the Applicant was staying as a "temporary guest". The Respondent stated that this information is incorrect.

The Respondent submitted a newspaper article in which a neighbour reportedly stated that the Applicant was living in the unit as a guest. The Applicant notes that he is not named in the article and that the information provided by that neighbour is incorrect.

The Applicant submitted bank records that shows he withdrew \$500.00 on May 01, 2020, \$550.00 on June 01, 2020; \$500.00 on June 30, 2020, and \$520.00 on August 05, 2020.

The Applicant is claiming compensation, in the amount of \$2,000.00, for “temporary shelter costs”. In support of this claim the Applicant stated that:

- He stayed in various locations during the first few days of September of 2020;
- He submitted no evidence that he paid to stay in various locations during the first few days of September;
- He moved into his grandfather’s home on September 6th, 8th, or 9th;
- He is still living with his grandfather; and
- He pays monthly rent of \$500.00 to his grandfather.

The Applicant is claiming compensation, in the amount of \$1,500.00, for “rent compensation”. In support of this claim the Applicant stated that he believes the compensation was due because he had to spend time finding a new home.

The Applicant is claiming compensation, in the amount of \$118.09, for the cost of renting a moving truck. In support of this claim the Applicant stated that he rented a moving truck to move his property from the nearby garage. The Applicant submitted a receipt for renting a vehicle, dated September 25, 2020, in the amount of \$108.09.

The Respondent stated that he did not know anything about the need to rent a moving truck.

The Applicant is claiming compensation, in the amount of \$662.25, for 5 months of storage costs. The Applicant stated that he was able to store a large amount of property at the rental unit. He stated he did not have room to store these items at his current residence, so he needed to rent a storage locker to store some of his property.

The Respondent stated that the Applicant did not have storage facilities at the rental unit.

The Applicant submitted documents that show he has paid \$545.80 in storage costs for the period between September 25, 2020 and January 24, 2021, which is 4 months. He

submitted photographs of the interior/exterior of the rental unit, that show a large number of personal items at the unit.

The Applicant is claiming compensation, in the amount of \$259.63, for an internet cancellation fee. The Applicant stated that he had a contract with his internet provider, and he had to pay a cancellation fee of \$259.63 when he ended the contract prematurely.

The Applicant submitted documentation from his internet provider which indicates his internet service was canceled on November 27, 2020 and that on November 29, 2020 he was charged a "service agreement fee" of \$255.00 plus taxes.

The Respondent stated that he wants this claim dismissed, although he presented no submissions in support of this declaration.

The Applicant is claiming compensation, in the amount of \$230.18, for internet charges for September, October, and November of 2020. The Applicant stated that he did not initially cancel his internet service because he was planning on moving the service to his new residence, but he did not need to move it to his grandfather's residence because there was already internet service at that address.

The Applicant submitted documentation from his internet provider that indicates the internet service was terminated at the rental unit at the end of November, because service was installed at that address under a different account. The Applicant submitted documentation that indicates he was charged \$78.40 for internet service for September of 2020.

The Respondent stated that he wants this claim dismissed, although he presented no submissions in support of this declaration.

In his Application for Dispute Resolution the Applicant applied for an order requiring that the Respondent return personal property to him. In the Application for Dispute Resolution he declared, in part, that:

- The police helped him retrieve some of his belongings (emphasis added);
- The police forwarded a list of outstanding items to the Respondent;
- The Respondent has been "uncooperative as of yet";
- "Given the circumstances", he does not feel he "can return and I seek compensation for missing belongings"; and
- He will list the missing items on the Monetary Order Worksheet.

The Applicant stated that:

- On September 25, 2020 he went to a nearby garage, with a police escort, and recovered some of his personal property which had been moved there by the Respondent;
- None of the property on the list he submitted in evidence, titled “Missing Stuff”, was in the nearby garage when he went there on September 25, 2020; and
- He did not leave any property in the garage after September 25, 2020.

The Respondent stated that:

- Sometime after changing the lock on August 31, 2020, he and his nephew moved all of the Applicant’s belongings from the rental unit to a nearby garage, which belongs to his sister;
- The Applicant went to his sister’s garage on September 26, 2020, with the police, and was given the opportunity to recover his personal property;
- All of the property on the list submitted in evidence by the Applicant, titled “Missing Stuff”, was moved to his sister’s garage, including the internet modem the Applicant contends is missing; and
- All of the property on the Applicant’s list is still being stored in his sister’s garage.

The Applicant is claiming compensation, in the amount of \$279.98, for an internet modem. He is also seeking compensation for the items listed on the “Missing Stiff” list. The Applicant stated that he did not leave any personal property in the garage, including the modem, after he recovered his property from that location in September of 2020.

The Respondent stated that the internet modem was in the nearby garage when the Tenant recovered his property, and it is still in the garage.

The Respondent submitted an email, dated November 16, 2020, which he sent to the police constable involved with the return of the Applicant’s property in September of 2020. In this email the Respondent is clearly attempting to arrange a time for the Applicant to pick up the remainder of his property.

The Respondent submitted an email, dated November 26, 2020, from the aforementioned police constable. In this email the constable informed the Respondent that the Applicant is “no longer interested in picking up his remaining belongings” from the Respondent and that he will be dealing with the Residential Tenancy Branch.

Analysis:

On the basis of the undisputed evidence, I find that the Applicant lived in this rental unit in May, June, July, and August of 2020.

I favour the testimony of the Applicant, who stated that he paid monthly rent of \$500.00, in cash, over the testimony of the Respondent, who stated that the Applicant was living in the unit as his guest. I favour the testimony of the Applicant in this regard because the Applicant submitted bank records that show he withdrew \$500.00 on May 01, 2020, \$550.00 on June 01, 2020; \$500.00 on June 30, 2020, and \$520.00 on August 05, 2020. I find that these cash withdrawals strongly support the Applicant's testimony that he paid \$500.00 in rent, in cash, on, or about, the first day of each month.

On the basis of the Applicant's testimony that he paid monthly rent of \$500.00 for the four months he lived in the unit, I find that the Applicant and the Respondent entered into a verbal tenancy agreement. I therefore find that this living arrangement is subject to the *Residential Tenancy Act (Act)*.

In determining that a tenancy existed, I placed little weight on the letter from a neighbour, in which the neighbour declared that they were under the impression the Applicant was staying as a "temporary guest" and little weight on the newspaper article in which a neighbour reportedly stated that the Applicant was living in the unit as a guest. I placed little weight on this evidence because the neighbour is a third party who would have no direct knowledge of a tenancy agreement between the parties.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in

writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when all of the Tenant's property was removed from the rental unit, which was sometime after August 31, 2020. I therefore find that this tenancy ended sometime after August 31, 2020, pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

On the basis of the undisputed evidence, I find that the Applicant did not return to the rental unit after August 29, 2020.

I find that there is insufficient evidence to corroborate the Respondent's testimony that on August 29, 2020 the police told him the Applicant was no longer permitted to reside at the rental unit. I find that this testimony is entirely inconsistent with the testimony of the Applicant. More importantly, it is inconsistent with the Undertaking submitted in evidence, dated August 29, 2020, which prohibits the Applicant from attending a different residential address. I note there is another Undertaking, dated September 25, 2020, which prohibits the Applicant from going to the area near the rental unit, however that was not in place in August of 2020.

Regardless of why the Applicant did not return to the rental unit prior after August 29, 2020, I find there is no evidence that he was legally prohibited from doing so.

On the basis of the undisputed evidence, I find that the Respondent changed the locks to the rental unit on August 31, 2020. I find that the Respondent breached section 31(1.1) of the *Act*, when he changed the locks or other means of accessing the rental unit without the consent of the Applicant and without providing the Applicant with new keys or other means of accessing the unit, as the tenancy had not been lawfully ended at that point.

I find that when the Respondent changed the lock to the rental unit, he prevented the Applicant from occupying the rental unit and from personally recovering his belongings from the unit.

In the event the Respondent wished to end this tenancy, he should have served the Applicant with a One Month Notice to End Tenancy for Cause, which would have provided the Applicant with time to find alternate living/storage opportunities.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances, the Applicant bears the burden of proving he suffered a loss as a result of the Respondent breaching the *Act*.

I find that the Applicant has failed to establish that he experienced “temporary shelter costs” or additional rent costs as a result of the Respondent changing the locks. The Applicant was able to find temporary accommodation at no cost, which included spending at least one night with the Respondent. Shortly after the locks were changed, he was able to move to his grandfather’s house where he began paying the same amount of rent. The Applicant has failed to establish that he incurred any increased housing costs as a result of the locks being changed.

On the basis of the undisputed evidence, I find that sometime after August 31, 2020 the Respondent moved the Applicant’s property from the rental unit to a nearby garage. On the basis of the undisputed evidence I find that the Applicant was provided access to that garage in September of 2020, for the purposes of recovering his property.

The evidence shows that the Applicant paid \$108.09 to rent a vehicle, which he used to move personal property from the aforementioned garage. I find that this expense may not have been incurred if the Respondent had not changed the lock to the rental unit and moved the Applicant’s property from the unit, as the Applicant may have been able to continue living in the unit. I therefore find that the Applicant is entitled to compensation for these moving costs.

On the basis of the photographs submitted in evidence and the testimony of the Applicant, I find that the rental unit was large enough to store a significant amount of personal property. On the basis of the testimony of the Applicant, I find that he is

unable to store all of his personal property at his current residence. I find it reasonable to accept this testimony, as it is corroborated by the evidence that shows he rented storage facilities.

On the basis of the documentary evidence submitted, I find that the Applicant incurred storage costs of \$545.80 for the 4 months between September 24, 2020 and January 24, 2021. I find that he would likely not have incurred those costs if the Respondent had not changed the locks and the tenancy had continued. I therefore find that the Applicant is entitled to recover compensation for the storage costs, in the amount of \$545.80.

I find that the Applicant had ample time to find alternate arrangements to store his property by January 24, 2021. I therefore find, pursuant to section 7(2) of the *Act*, that he is not entitled to storage costs for any period after January 24, 2021.

On the basis of the undisputed evidence, I find that the Applicant paid \$255.00 plus tax for cancelling his internet service prematurely. I find that he would likely not have incurred this fee if the Respondent had not changed the locks and the tenancy had continued. I therefore find that the Applicant has established the full amount of his claim for the cancellation fee, in the amount of \$259.63.

On the basis of the undisputed evidence, I find that the Applicant paid for internet service at the rental unit for September of 2020, in the amount of \$78.40. I find that he was unable to use that service because the Respondent changed the locks. I therefore find that the Applicant is entitled to compensation for this service fee, in the amount of \$78.40.

Section 7(2) of the *Act* stipulates, in part, that a party who claims compensation for damage or loss that results from the other party's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that it would have been reasonable for the Applicant to cancel his internet service sometime during the month of September of 2020.

Had the Applicant cancelled his internet service in September of 2020, he would not have paid service fees for October and November of 2020. As the Applicant did not take reasonable steps to avoid service fees for October and November of 2020, I dismiss his claim for service fees for those months.

I favour the Respondent's testimony that property belonging to the Applicant is still being stored in the nearby garage over the Applicant's testimony that he removed all of his personal property from the garage on September 25, 2020.

I favour the Respondent's testimony that property is still being stored in the nearby garage because it is corroborated by the email, dated November 16, 2020, in which the Respondent contacted the police constable involved with the return of the Applicant's property in September of 2020 to arrange a time for the Applicant to pick up the remainder of his property. I further find that the Respondent's testimony is strongly corroborated by the email, dated November 26, 2020, from the aforementioned police constable, in which the constable advises the Applicant is "no longer interested in picking up his remaining belongings" from the Respondent and that he will be dealing with the Residential Tenancy Branch. I find it highly unlikely that these parties would have exchanged these emails if the Applicant no longer had property stored in the garage.

I find that the Applicant's testimony that there was no property left in the garage after September 25, 2020 lacks credibility, as it is refuted by the information provided by the Applicant in his Application for Dispute Resolution. In the Application for Dispute Resolution the Applicant declared, in part, that the police helped him retrieve "some" of his belongings; that the Respondent is being uncooperative, (presumably in regard to returning personal items); he does not feel he "can return" (presumably to recover the "missing items"); and that he will list the "missing items" on the Monetary Order Worksheet. I find that these declarations serve to corroborate the Respondent's submission that the Applicant's property is still in the garage. I find that the declarations strongly suggest that the Applicant would prefer to receive financial compensation for this "missing" property, rather than recovering it from the Respondent.

As the evidence suggests that at least some of the property listed on the list titled "Missing Stuff" is still at the rental unit and that the Respondent has failed to take reasonable steps to recover it, I find he is not currently entitled to financial compensation for any of the property he alleges is missing.

I specifically find that the Applicant has failed to establish that the internet modem was not moved from the rental unit to the garage and that it is still being stored there. I therefore find that the Applicant has not taken reasonable steps to recover that modem, either by taking it when he was in the garage in September of 2020 or by arranging to recover it at a later date. As the Applicant has failed to establish that he could not

recover the modem, with reasonable effort, I dismiss his application for compensation for the missing modem.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the claim for mail cost and land title search costs. The Applicant did not apply to recover the filing fee.

Section 26(3) of the *Act* prohibits landlords from seizing a tenant's personal property.

I hereby direct the Respondent to take the following steps to return all of the Applicant's property he currently has in his possession:

- Within seven days of receiving this decision, contact the Applicant, either by registered mail or by email, and propose three dates and times (between 9:00 a.m. and 9:00 p.m.) when the Applicant will be given access to his personal property;
- Retain proof that three dates were offered and be prepared to present that proof should there be another dispute resolution proceeding regarding this property;
- Arrange for the Applicant to be given access to his personal property on any of the dates proposed by the Respondent, or on any reasonable date subsequently suggested by the Applicant;
- Consider the Applicant's property abandoned if, within 60 days of receiving the proposed dates, the Applicant does not agree to a date/time for the return of the property;
- Consider the Applicant's property abandoned if the Applicant does not retrieve his property at the agreed upon date/time; and
- Take a video of the Applicant's property being returned to him, in a manner that clearly details the items being returned.

In the event the Respondent concludes that the Applicant has abandoned his personal property, I direct the Respondent to comply with sections 25, 26, 27, 28, 29, and 30 of the *Residential Tenancy Regulation*, which appear below.

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.

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.

Conclusion:

The Respondent has been ordered to return personal property belonging to the Applicant, as outlined in the analysis portion of this decision.

The Applicant has established a monetary claim of \$991.92 which includes \$108.09 for moving costs, \$545.80 for storage costs, \$259.63 for an internet cancellation fee, \$78.40 for internet service for September of 2020, and I am issuing a monetary Order in that amount. In the event the Respondent does not voluntarily comply with this Order, it may be filed with the Province 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: March 11, 2021

Residential Tenancy Branch