



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNDCT, RPP, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the tenant's personal property pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### *Attendance*

The landlord and tenant attended and had opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained; I answered all the parties' questions.

Preliminary issues are addressed.

#### *1. Removal of Second Tenant from Application for Dispute Resolution*

The parties agreed the name TM be deleted as an applicant. TM was not served by either party and did not attend the hearing. TM submitted evidence stating he does not want to be a party.

The proceedings are accordingly amended throughout to remove TM as an applicant.

The tenant FP is the sole applicant and is referred to as "the tenant".

TM's name is referenced on the first page.

## *2. Service by Landlord*

The tenant acknowledged receipt of the landlord's evidence.

## *3. Service by Tenant*

The landlord acknowledged receipt by registered mail of the tenant's Notice of Hearing and Application for Dispute Resolution.

However, the landlord objected to the admission of any evidence from the tenant testifying he had not received copies of any documents or a properly served USB.

Accordingly, the tenant provided testimony about service of his evidence.

The tenant testified the envelope sent by registered mail to the landlord contained paper documents (receipt acknowledged by landlord). The envelope also included a USB containing copies of considerable communication between the parties, pictures of missing personal possessions, list of valuation of the items and so on, for a total of over 200 documents.

The tenant called his mother MP as a witness who testified she saw the tenant insert the USB into the envelope.

The tenant submitted a picture of the envelope prior to sealing and mailing. The envelope contained the paper documents (acknowledged by landlord) and the USB.

The landlord denied any USB was included in the envelope.

The RTB Rules set out the procedure for submission of digital evidence. The tenant must provide a printed description of the digital device on RTB Digital Evidence Form # 43. The tenant must serve the landlord with the form and digital evidence. Before the hearing, the tenant must also confirm with the landlord they can access the files.

In this case, the tenant did not comply with the Rules as the tenant did not submit RTB # 43 and did not confirm access to the files with the landlord.

I accept the tenant's credible evidence as supported by the witness MP and find that is likely the USB was placed in the envelope. I find the landlord's testimony self-serving and unreliable. I address the issue of credibility later in the Decision.

Regardless, I find the tenant has not complied with the Rules regarding service of digital evidence. These rules assure fairness of procedure. Without the landlord's acquiescence and acknowledgement of receipt of the tenant's documents, I am unable to find the tenant has complied with the service requirements of the Act. I accordingly find the tenant's evidence is inadmissible.

In summary, considering the evidence and the Rules, I do not consider any documentary evidence submitted by the tenant allegedly on the USB. I will only consider his verbal testimony at the hearing and the testimony of his two witnesses.

#### *4. Settlement*

During the hearing, the parties agreed to a meeting at the unit on February 11, 2023. At the scheduled time, the landlord would give to the tenant all the tenant's property in the landlord's possession wherever located.

#### *Settlement Procedure*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both that I would not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the

settlement may be recorded in the form of a Decision or an Order. I discussed settlement with the parties with their consent.

During the hearing, the landlord acknowledged he has some of the tenant's possessions for which he did not have an itemization or pictures. The landlord described them as mainly kitchen and personal possessions of small value, less than \$500.00. The landlord agreed to give all items of the tenant's that he has to the tenant.

#### *Agreement Between Parties*

The parties agreed they will meet at the unit at 1:00 PM on Saturday February 11, 2023 at which time the landlord shall give to the tenant **all** the tenant's personal possessions that the landlord has. This includes any items stored off the property in which the unit is located, although the landlord stated there was no off site storage.

The Act in section 65(e) allows the Director to make an Order requiring a landlord to return personal property:

65 (1) Without limiting the general authority in section 62 (3) [arbitrator's authority], if an arbitrator finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the arbitrator may make any of the following orders:

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

#### *Return of Personal Property – Order*

Further to the agreement between the parties, I order as follows:

1. The parties shall meet at the unit on February 11, 2023, at 1:00 PM.
2. At that time, the landlord shall deliver to the tenant **all** the tenant's personal property in the landlord's possession, wherever located.
3. Should the landlord fail to return the property as ordered, the tenant is at liberty to make such further application as may be advised.

These settlement terms were discussed extensively in the hearing. Each party consented to the terms.

The parties were unable to agree on the remainder of the outstanding issues and the hearing resumed.

#### Issue(s) to be Decided

Is the tenant entitled to an Order for the return of property or compensation for the value of the items?

Is the tenant entitled to reimbursement of the filing fee?

#### Background and Evidence

##### *Preliminary*

Considerable conflicting testimony was submitted in a lengthy hearing of 2 hours and 11 minutes. The tenant called two witnesses, ACJ his friend and colleague, and MP, his mother.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

##### *Overview of Claim*

The tenant claimed the landlord removed some of his personal property from the unit after he was taken to the hospital two hours after moving in. The landlord has refused to return the items. The landlord is keeping the items as security for a debt the landlord alleged the tenant owed. The tenant requested an order for their return. The landlord denied having any other items belonging to the tenant other than the items referenced in the settlement agreement between the parties, above.

Alternatively, the tenant requested an award for the replacement value of the items.

*Tenancy*

The parties agreed the tenant and TM rented the upper level of a house from the landlord. The house is located on several acres on Vancouver Island. The landlord lives on the mainland.

TM is not a party to this Application for Dispute Resolution. He had lived in the house for some time before the tenancy was due to start.

The parties agreed on the specifics of the tenancy agreement as follows:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	<b>Yes, signed July 23, 2022</b>
Type of Tenancy	Month-to-month
Beginning Date	September 1, 2022
Rent payable on first of month	\$3,300.00
Security deposit	\$1,650.00
Application by landlord for damages, compensation or retention of security deposit	None; this is first application between parties
Condition Inspection Report on Move-In signed by both and submitted	Yes, not submitted
Condition Inspection Report on Move-out signed by both and submitted	None on moving out
Arrears of Rent Alleged by Landlord	\$1,650.00

Each party provided information as follows.

*Tenant's Claim*

The tenant called the witness ACJ who provided testimony. The chronology of events to which the tenant follows:

1. The tenant is a formally trained composer, musician, music mixer and businessperson. He agreed with TM to rent the unit, the upper half of a house, from the landlord on the understanding each (tenant and TM) would pay half the rental expenses. The tenant, TM and the landlord signed a monthly tenancy agreement for \$3,300.00 to start September 1, 2022.
2. The tenant paid the landlord half the rent and half the security deposit before September 1, 2022, the start date of the tenancy. The payments were \$1,650.00 and \$825.00, respectively.
3. The landlord has retained both these amounts paid by the tenant (\$1,650.00 and \$825.00) and has not brought an application for damages or to retain the security deposit.
4. The tenant has severe post-traumatic stress disorder (PTSD), a mental health condition with symptoms including periodic and reoccurring psychotic episodes.
5. The tenant moved his personal possessions into the unit on August 31, 2022. Two hours later, the tenant underwent a psychotic episode and telephoned the police. The police attended. The tenant was immediately involuntarily committed to a hospital for mental health treatment where he remained for two weeks.
6. TM and the landlord attended at the unit on September 1, 2022. They agreed the tenancy was over. TM and the landlord further agreed TM would move the tenant's possessions into a storage shed on the property as soon as possible. TM would then move out.
7. The storage shed had no doors. TM moved most of the tenant's possessions from the house to the storage shed between September 1 and 5, 2022. A tarp covered the stored items. TM then moved out after signing a Mutual Agreement to End Tenancy with the landlord.
8. On September 1, 2022, the landlord told TM the tenant was banned from the property. Some days later, the tenant learned about this from social media while hospitalized. The tenant has not returned to the unit since the hospitalization on August 31, 2022.

9. While in the hospital, the tenant was not permitted to use the telephone for a several days. He had left his cell phone at the unit, which has never been recovered.
10. While in the hospital, the tenant called ACJ as soon as he could access a phone. He asked ACJ to help him. The tenant explained ACJ was a trustworthy friend and business partner who lived in the States. During the hearing the tenant called ACJ as a witness.
11. At the tenant's request, ACJ called movers to retrieve the tenant's possessions from the storage shed. The hired movers went on September 11 and 17, 2022 and took items from the storage shed. The tenant's belongings were moved to the tenant's storage unit off the property. ACJ arranged for the tenant's car to be towed away.
12. When the tenant was released from the hospital, he saw what had been moved by the moving company. For the first time, he realized that several musical instruments and equipment used for producing music were missing ("the missing items").
13. The tenant called and texted the landlord. The landlord told him the tenant owed him \$8,000.00. If the tenant paid \$8,000.00 to the landlord, the landlord would return the items. The landlord informed the tenant the property on which the unit was located, was beneficially owned by a criminal organization whose name appears on the first page and was sometimes referred to by the landlord by its initials. The landlord said that organization would make sure the tenant paid. The landlord threatened to kill him. The tenant interpreted this as a threat to his safety if he did not pay the amount demanded.
14. The tenant did not pay \$8,000.00 as the landlord demanded. The tenant requested the landlord to return the missing items. He believes the landlord is holding the missing items at an unknown location and will sell eventually sell them.
15. The tenant was informed by his friend, the witness ACJ, and believed that the landlord made a similar threat to ACJ. That is, the landlord told ACJ he, the landlord, had the missing items and would return them if ACJ paid \$8,000.00.



The landlord also told ACJ that the said criminal organization in his hometown would make ACJ pay.

16. ACJ stated he is a finance professor living and working in the USA. He stated he reported the threat to the local police and believed the landlord was threatening his physical safety with violence.
17. No additional money was paid to the landlord other than the rent and security deposit paid by the tenant.
18. The tenant testified to the missing items. He read off the list at the hearing as set out in the following table. He also researched the value of used items to replace each one and provided an estimation of the replacement cost as reflected in the table. He testified that the valuations were the amount needed to replace each item with the same second-hand item.
19. The tenant stated all the missing items were used. He said he no longer had receipts for any of them. The missing items were of varying ages as he had acquired them from time to time or they were gifts. He used them all in music endeavours. When financially able to do so, he planned to replace the items with those of comparable value.
20. The tenant asked for an Order that the landlord be required to return to him the missing items or an award of \$26,929.00 the cost of replacing the items with used ones. For greater certainty, this list does not include items the tenant expects to retrieve under the Settlement Agreement set out at the beginning of the Decision. The last item on the list is lawn maintenance equipment ("a weed whacker").
21. The tenant stated his disallowed evidence included pictures of the missing items and links for the used value as found on a reliable website. The tenant testified to the missing items and corresponding replacement used value as follows:

<b>Description</b>	<b>Qty</b>	<b>Unit price</b>	<b>Total price</b>
Yamaha Mox8 Music Production Synthesizer	1	\$2,000.00	\$2,000.00
Bc Rich Kerry King Signature Series Warlock Electric Guitar	1	\$2,000.00	\$2,000.00
Roland TD 10 Drums	1	\$3,100.00	\$3,100.00
Roland TD 6 Drums	1	\$1,500.00	\$1,500.00
Gibson Explorer Studio Guitar	1	\$3,200.00	\$3,200.00
Carvin Bass Guitar	1	\$2,900.00	\$2,900.00
Double Neck SG Guitar	1	\$785.00	\$785.00
Blackmagic Design Mini-ATEM Switcher	1	\$925.00	\$925.00
Gopro Hero 5 Black	3	\$250.00	\$750.00
Sennheiser HD 700 Reference Headphones	1	\$1,100.00	\$1,100.00
Marshall JDM Speaker	1	\$3,000.00	\$3,000.00
4x12 Slant Cab Speaker	1	\$1,000.00	\$1,000.00
Dell Precision Workstation	1	\$1,500.00	\$1,500.00
Husky Roller Toolbox	1	\$700.00	\$700.00
Aluminum Cantilever Double Kick Pedal	1	\$600.00	\$600.00
Ryobi 8 Tool Cordless Battery Combo Set	1	\$899.00	\$899.00
Bar Clamps		75.00	75.00
Stihl Fs 56 Straight Shaft Weed Whacker		369.00	369.00
		<b>TOTAL</b>	<b>\$26,929</b>

*Evidence of Witness ACJ*

The witness ACJ testified as follows:

1. ACJ is a finance professor and teaches/lives in the USA. The tenant and ACJ are friends and business colleagues who have a joint investment in a business. He is aware the tenant has music activities, has seen pictures of tools and equipment.
2. In early September 2022, the tenant phoned him, said he was in the hospital and asked for help in moving his possessions out of the storage shed.
3. ACJ offered to help him from a distance although he could not come to Canada. ACJ phoned the landlord and told him he would help the tenant by arranging for the storage of his possessions.
4. ACJ then communicated with the tenant, the landlord, movers, and others by telephone. He hired movers to take the tenant's possessions from the storage shed on the property and put them in another storage for the tenant. This occurred on September 11 and 17, 2022. ACJ also arranged for the tenant's car to be towed and stored.
5. The tenant told ACJ that the removed possessions did not include special guitars and other valuable items. ACJ phoned the landlord and conveyed the information.
6. ACJ said the landlord was "initially cagey" and the landlord denied having any of the tenant's possessions. After further calls, the landlord acknowledged having the missing items and said he was "hanging onto it as leverage". ACJ understood the landlord had taken and was hiding the valuable items such as guitars, drum sets and other "large, heavy things".
7. The landlord informed ACJ that he had the missing items "in a safe place". The landlord also said the tenant had left the unit in a mess and owed him money. The landlord said he needed \$6,000.00 to be paid before the missing items could be picked up. He demanded ACJ pay. ACJ refused.
8. ACJ believes the landlord left "trash stuff" in the storage shed and took "the nice stuff" to keep and sell.

9. ACJ does not know why the landlord demanded \$6,000.00 or why he increased the amount to \$8,000.00.
10. ACJ reported he had several conversations with the landlord asking him to please give the tenant back his possessions. ACJ encouraged the landlord to pursue any financial claims through the Courts.
11. In later calls, the landlord started to put pressure on ACJ, saying the land on which the unit was located belongs to the criminal organization referenced on the first page. If the landlord wasn't paid \$8,000.00, he would "take care of it" by having the local chapter of the criminal organization find ACJ and deal with him.
12. As a result, ACJ feared for his safety and reported the warning to the police in his residential area.
13. The landlord then threatened in calls to expose ACJ or the tenant. In late November 2022, the landlord sent an email to ACJ stating he had uncovered nefarious things about ACJ and the tenant and would expose them if they interfered with the landlord. ACJ did not know what he was talking about but understood the landlord was attempting to increase pressure to get the money.
14. ACJ did not have knowledge of the specific descriptions or valuations of the missing items.
15. In summary, ACJ believes the landlord took all the tenant's valuable possessions, leaving the "junkier stuff" and intends to sell the missing items. ACJ described the landlord's behaviour throughout as "bizarre".

#### *Evidence of MP*

The tenant called his mother MP who provided the following testimony. She expressed distress and anxiety about the described events.

1. The tenant had a psychotic episode and was hospitalized from August 31, 2022. She learned of this about 10 days later.
2. The tenant had extensive tools and recording equipment. He had been collecting them for years. The tenant had lived with her not long ago for 8 years. She was

not familiar with brands, precise descriptions or valuations.

3. When she learned from the tenant that items were missing, she called TM who told her the landlord was holding the tenant's possessions "hostage".
4. MP then called landlord who told her he had some of the tenant's things and wasn't going to return them. She asked for the return of the items. The landlord told her that she and the tenant were not allowed in the unit.
5. MP nevertheless went to the unit and saw the storage shed with "everything [the tenant's possessions] thrown in there". There was no door. Everything was covered with a tarp. She could not see any of the "important things" that the tenant owned.
6. When the tenant was discharged from the hospital, the tenant and MP went to the police and reported the items as stolen by the landlord. The police said it was a civil matter.
7. On September 25, 2022, the landlord called her 5 times. He threatened to go to her place and "she would not like it". She believes the tenant is harassing and threatening her for wanting the tenant's missing items back and for going to the police.

#### *Landlord's Evidence*

The landlord denied most of the tenant's and witnesses' evidence. He testified as follows:

1. The landlord agreed there was a tenancy agreement between TM, the tenant and the landlord as described earlier. He stated he owns the property, and no one has any interest in it.
2. The landlord agreed the tenant moved his possessions into the unit on August 31, 2022. The unit was empty and clean. The tenant immediately was apprehended, and the landlord has never seen him again. The landlord believed he had been arrested.
3. The landlord went with TM to the unit on September 1, 2022 and found the unit filthy and chaotic. He could not enter the living room as there were huge electronic

instruments, 6' speaker boxes, and 20 1' x 6' wooden boxes, among many other things.

4. The landlord said there were used condoms and syringes lying around. The bathroom was dirty. There was cut hair, unexplainable fluids and "biological contamination".
5. That day, the landlord agreed with TM that TM could move all the tenant's possessions out of the house into the storage shed. The storage shed had no door. TM did so between September 1 – 5, 2022 and then TM vacated the unit.
6. On September 1, 2022, the landlord banned the tenant from coming back to the property and informed the tenant and others. The tenant has never been back.
7. Movers came twice, on September 11 and 17, 2022 and emptied most of the shed. The tenant's car was hauled away. The tenant thanked the landlord for the return of his belongings.
8. The tenant subsequently wrongly believed the landlord had his missing items and demanded their return, primarily music instruments and recording equipment.
9. The landlord does not have any of the alleged missing items. He did not remove any of the tenant's possessions. He does not have a storage unit anywhere in which he could keep the items. He has no knowledge of the alleged missing items or what may have happened to them.
10. Before the unit could be occupied again, the landlord decided it had to be thoroughly cleaned. He incurred an expense of \$6,575.65 for "biohazard cleaning" on September 10, 2022. The landlord said he had a receipt in this amount which he did not submit as he had given up hope of recovery.
11. The landlord wanted the tenant to pay him \$8,000.00 as compensation for the house cleaning and unpaid rent for the first month of the tenancy. The landlord acknowledged telling both the tenant and witness ACJ that he wanted \$8,000.00.
12. The landlord denied threatening the tenant or the witness ACJ with payback by any criminal organization including the one referenced on the first page if he did not receive \$8,000.00. He denied threatening MP, the tenant's mother.

13. After TM moved the tenant's possessions to the storage shed and the unit had been cleaned, the landlord removed some small valueless remaining items from the house, such as a space heater and kitchen ware, and put them in the storage shed with items left by the movers. They are of minimal value. The parties have agreed the tenant can collect the items.
14. The landlord acknowledged that he does not want any money from the tenant now. He has not brought an application for compensation against the tenant. He has not returned the security deposit.
15. The landlord has no knowledge of whether the tenant owned the items he claimed are missing. He acknowledged seeing "huge" speakers and many boxes in the living room.
16. The landlord did not remove and store the tenant's possessions as required under the Act.
17. There is a clause in the tenancy agreement stating the landlord is not responsible for any damage or loss to the tenant's possessions.
18. The landlord issued a 10 Day Notice and submitted a copy in the RTB form naming TM as the defaulting tenant. No Application for Dispute Resolution was filed, and no Order of Possession was obtained.

The landlord submitted documents, copies of texts, photographs and a statement. Key submissions are now reviewed.

#### *Landlord's Evidence – TM*

The landlord submitted an undated and unsigned 19-page submission allegedly by TM. The landlord did not call TM as a witness. The typed document describes some events around the tenancy.

The document described the alleged chaos and filth created in the unit by the tenant on August 31, 2023, the day he moved in. Undated photos are attached of piles of cables, a dirty bathroom, mounds of unorganized possessions, a 6' "sound mixing board" and unwashed laundry stated to be the responsibility of the tenant.

A formal statement from the RCMP was attached regarding a previous incident involving the tenant. No explanation was provided regarding the origin of the RCMP report.

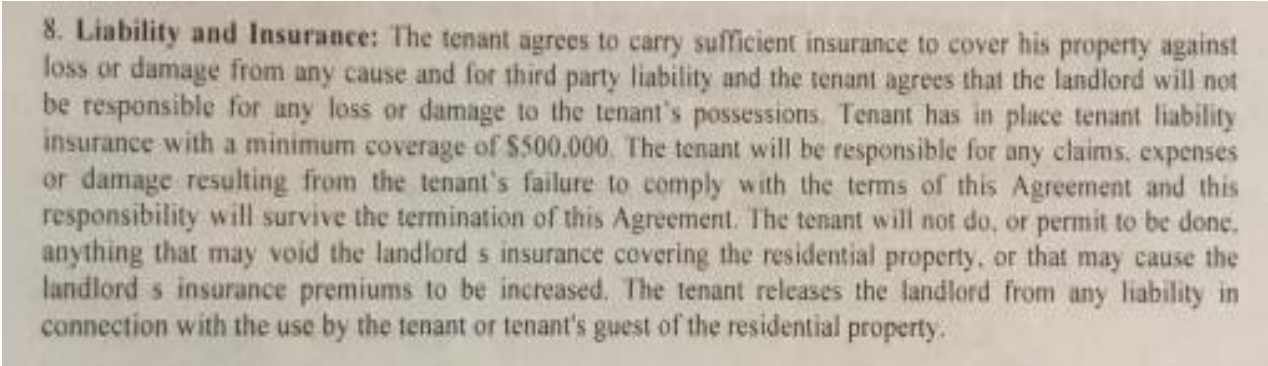
Pictures are included of the storage shed.

The landlord submitted an allegation in a text by the tenant's previous landlord that the tenant may have stolen something from him. The previous landlord was not called as a witness.

### *Tenancy Agreement - Liability*

The landlord submitted an Addendum to the standard form RTB lease signed by the parties.

The Addendum contains a liability and insurance clause. Section 8 stated:



8. **Liability and Insurance:** The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability and the tenant agrees that the landlord will not be responsible for any loss or damage to the tenant's possessions. Tenant has in place tenant liability insurance with a minimum coverage of \$500,000. The tenant will be responsible for any claims, expenses or damage resulting from the tenant's failure to comply with the terms of this Agreement and this responsibility will survive the termination of this Agreement. The tenant will not do, or permit to be done, anything that may void the landlord's insurance covering the residential property, or that may cause the landlord's insurance premiums to be increased. The tenant releases the landlord from any liability in connection with the use by the tenant or tenant's guest of the residential property.

The landlord argued that he was not responsible by virtue of the above section 8 for anything untoward that happened to the tenant's possessions.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

### *Credibility*

Given the conflicting testimony, I have considered credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor



of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its *harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.*

I have carefully reviewed the evidence. The tenant's testimony was straightforward and matter of fact although he sometimes presented as upset and distressed. The tenant spoke openly about his illness and hospitalization. He clearly and convincingly set out the events from his point of view. The tenant expressed his grief and frustration at the loss of valuable possessions personally important to him.

I find the tenant's recounting of the landlord's actions items to ring true. This includes the discovery of his missing items, the request for the return of the items denied by the landlord, the acknowledgement by the landlord that he had the tenant's missing items and the demand by the landlord for \$8,000.00 before giving the items back. The tenant described the landlord's actions after his hospitalization as deceptive, manipulative and threatening. His account of the landlord's actions was supported by the testimony of ACJ and MP. I find his testimony in this regard to be most likely true and I give significant credence to it.

I find the tenant's testimony as supported by the witnesses to be most in harmony with what is likely to have occurred. I have concluded the tenant's version of events is credible and plausible in the circumstances as I find them.

I find the landlord acknowledged the truth of the tenant's testimony in many key aspects. For example, the landlord acknowledged he did not comply with the Act regarding storage of the tenant's possession. I find the landlord's general denial of all responsibility for the whereabouts of the missing items to be dishonest, disingenuous and self-serving. I do not believe the landlord's evidence. I find his submitted documents, especially the purported statement from TM, to be of little weight.

Because of the above, I give little or no weight to the landlord's version of events. I find the landlord willfully and flagrantly ignored his responsibilities under the Act.

At the hearing, the landlord acknowledged he did not want any money from the tenant. I find it most probable the landlord has abandoned his demand for money as he has adequate security in the tenant's possessions, the missing items.

As a result of my findings regarding credibility, I give the tenant's testimony as supported by the two witnesses significant weight. Where the version of events differs, I prefer the tenant's version.

#### *Four-part Test*

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

(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.

...

67 Without limiting the general authority in section 62 (3) [. . .] 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 that party to pay, compensation to the other party.

### *Standard of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the tenant to prove their claims.

*Part 1 – 4-part – Has the other party failed to comply with the Act, regulations, or the tenancy agreement?*

### *End of Tenancy*

A tenancy remains in effect until such time it ends under section 44 of the Act. I find this tenancy did not end in accordance with the Act. It ended because of the landlord's unilateral actions without notice to the tenant who was in the hospital. The tenant did not consent to the ending of the tenancy or to the removal of his belongings.

The landlord issued a 10 Day Notice dated September 3, 2022 and submitted a copy in the RTB form naming TM as the defaulting tenant. I accept the tenant's evidence as supported by the 10 Day Notice that the tenant was not named or served. I find the landlord knew the tenant was in the hospital and where to serve him. The tenant had no opportunity to respond. No Order of Possession was obtained. I find the landlord was not entitled to evict under the Act and the tenancy did not end for unpaid rent.

### *Landlord's Right to Possession*

Even if a tenancy has ended and the tenant has not vacated the rental unit, the Act prohibits the landlord from taking possession without a Writ of Possession issued by The Supreme Court of BC.

To obtain a Writ of Possession under the Act, the landlord must first obtain an Order of Possession from the RTB.

As acknowledged by the landlord, I find that no Order of Possession was granted with respect to this tenancy. Therefore, I find the landlord did not have the required Writ of Possession to evict the tenant.

### *Abandonment*

Section 44 of the Act provides that a tenancy ends when a tenant abandons the rental unit. Abandonment is the only time a landlord may remove the tenant's possessions from the rental unit without the Order of Possession and Writ of Possession.

Part 5 of the Residential Tenancy Regulation outlines the rules for abandonment of personal property. Under section 24, a tenant is considered to have abandoned personal property in the following situations:

1. The tenancy has ended and the tenant has moved out.
2. They have not paid rent or lived in the rental unit for at least one continuous month.
3. They have removed almost all of their personal property.

In situations 2 and 3, the tenant is only considered to have abandoned the property if:

1. they inform the landlord verbally or in writing that they do not intend to return to the property; or
2. it is unreasonable for the landlord to assume they will return.

I have considered whether there is sufficient evidence of abandonment. Given the evidence before me, I do not find the tenant had abandoned his personal property. I also find the landlord's expressed belief the unit was abandoned was reasonable and unwarranted..

Rather, I am satisfied that the tenancy had not legally ended, and the tenant had not vacated or removed his personal property. His possessions were removed without his

consent at the direction, instruction, or acquiescence of the landlord within days of his hospitalization.

I find the tenant was hospitalized on August 31, 2022, 2 hours after he moved his possessions into the unit. The landlord knew the hospitalization was temporary or could have known if he had conducted reasonable enquires.

Because the tenant was hospitalized does not mean he abandoned the property.

I find the tenant did not abandon the unit.

### *Storage of Personal Property*

Section 25 of the Regulation further provides that a landlord must store the tenant's personal property for no less than 60 days following the date of removal.

Only if the tenant had abandoned the unit may the landlord enter and removed personal property. The landlord's obligations are set out in Part 5 subject to certain inapplicable exceptions:

1. Exercise duty of care by carefully removing the personal property and ensuring that nothing is damaged, lost, or stolen;
2. Store the personal property in a safe place for at least 60 days;
3. Keep a written list of the personal property;
4. Keep details of the removal and storage of the personal property for at least two years; and
5. Upon request, advise the tenant or tenant's representative that the personal property has been stored, or that it has been disposed of.

The landlord banned the tenant from the property shortly after he was hospitalized. The landlord did not remove the items to a safe place as required. A third party (TM) removed the tenant's possessions with the landlord's consent, encouragement, or acquiescence.

TM moved everything to a storage shed on the property with no door. The storage shed was not secure. The landlord did not submit a written list of the property.

Initially grateful for the return of his possessions, the tenant discovered many valuable

items were missing and immediately notified the landlord. The landlord acknowledged having the items and the tenant asked for their return.

I accept the evidence that the landlord demanded \$8,000.00 from the tenant and the two witnesses before he would release the tenant's missing items which he was holding. I find the landlord threatened the tenant and the two witnesses and I accept their evidence of the nature of the threat.

Having carefully reviewed the evidence, I conclude on a balance of probabilities that the landlord has the missing items and is keeping them in satisfaction of an alleged debt.

### *Liability Clause*

The landlord may not contract out of his obligations under the Act. I find there is no merit in this part of his argument.

### *Part 2 of 4-part Test: Did the loss or damage result from the non-compliance?*

I find the tenant has met the burden of proof on a balance of probabilities that the landlord's unlawful actions have resulted in the loss to him of the missing items listed earlier. I am unable to determine which items will be returned and the compensation to which the tenant may be entitled.

Accordingly, I grant the following Order requiring the landlord to return the tenant's possessions following which the tenant may apply for compensation.

### Order

With this Decision, I provide the tenant with an Order to serve upon the landlord. The landlord is hereby ORDERED to return the remainder of tenant's personal property to the tenant at the place, date and time **specified by the tenant** but no later than February 28, 2022.

The parties shall communicate by email at the email addresses on the first page.

If the items are in a storage facility, the tenant is to be provided with access (keys or access codes) and all costs with respect to the storage shall be paid by the landlord. All

costs for delivery shall be borne by the landlord.

The tenant may have an agent act on his behalf to help in retrieving his possessions.

The tenant is cautioned to consider attending any meeting with the landlord with a police officer. The tenant may request assistance of police to enforce the Order.

### *Leave to Reapply*

I am unable to determine with certainty what possessions the landlord will return or the final claim for missing items.

I therefore grant the tenant liberty to reapply for such further Order as may be necessary. The tenant may reapply for compensation for damages.

### *Security Deposit – Landlord's Obligations*

Section 38 of the Act sets out a process for how deposits are managed after a tenancy ends. When a tenancy ends, the tenant must give the landlord their forwarding address in writing within one year of when the tenancy ended. Once the landlord has received the tenant's forwarding address, they have 15 days to:

- Return the deposit(s) with any interest to the tenant,
- Ask the tenant to agree in writing to any deductions and return the difference to the tenant, or
- Apply for dispute resolution asking to keep all or some of a deposit.

Effective February 14, 2023, the landlord is deemed informed of the tenant's forwarding address which appears on the first page.

### *Filing Fee*

As the tenant has been successful in this application, the tenant is awarded reimbursement of the filing fee in the amount of \$100.00. A Monetary Order shall issue to the landlord in that amount.

Conclusion

*1. Return of Personal Property – Order*

Further to the agreement between the parties, I order as follows:

- a. The parties shall meet at the unit on February 11, 2023, at 1:00 PM.
- b. At that time, the landlord shall deliver to the tenant **all** the tenant's personal property in the landlord's possession, wherever located.
- c. Should the landlord fail to return the property as ordered, the tenant is at liberty to make such further application as may be advised.

*2. Return of Personal Property – Order*

The landlord is hereby ordered to return the remainder of the tenant's personal property to the tenant at the place, date and time **specified by the tenant by email to the landlord but** no later than February 28, 2023.

The parties shall communicate by email at the email addresses on the first page.

If the items are in a storage facility, the tenant is to be provided with access (keys or access codes) and all costs with respect to the storage shall be paid by the landlord. All costs for delivery shall be borne by the landlord.

The tenant may have an agent act on his behalf to help in retrieving his possessions.

The tenant is cautioned to attend any meeting with the landlord with a police officer. The tenant may request assistance of police to enforce the Order.

*3. Leave to Reapply*

I therefore grant the tenant liberty to reapply for such further Order as may be necessary. The tenant may reapply for compensation for damages.



4. Filing fee

The tenant is granted a Monetary Order in the amount of \$100.00 for return of the filing fee.

The Monetary Order may be filed and enforced in the Courts of the Province of BC.

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: February 13, 2023

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Residential Tenancy Branch