



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Preliminary Issues

At the outset of this proceeding the Landlord stated that he received a call yesterday, November 28, 2013, from someone who identified themselves as being the Tenant's social worker. This person informed the Landlord that the Tenant has been hospitalized for about three months and she has recently been declared a "non-person" and is no longer in control of her own affairs. He said that is all the information this person would provide him.

After a brief discussion the Landlord confirmed he would be withdrawing his claim for unpaid rent, with leave to reapply once he determines who will be handling the Tenant's affairs. He wished to proceed with his request for an Order of Possession.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 15, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Landlord testified that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, by registered mail on October 19, 2013. Canada Post tracking information was provided in the Landlord's testimony. Based on the Landlord's submission I find the Tenant was sufficiently served notice of this proceeding for the purpose of an Order of Possession, pursuant to section 89(2)(e) of the Act.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord confirmed the parties entered into a month to month tenancy that began on April 20, 2005. Rent began at \$630.00 per month and was subsequently raised to \$730.00 per month effective July 1, 2013. The Tenant paid a security deposit of \$315.00 on April 20, 2005.

The Landlord stated that the last rent payment received from the Tenant was on July 3, 2013. On October 2, 2013, they posted a 10 Day Notice to the Tenant's door for \$2,265.00 in unpaid rent. The Landlord seeks to regain possession of the unit as soon as possible.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

The Tenant is deemed to have received the 10 Day Notice on October 4, 2013, three days after it was posted to the door, and the effective date of the Notice is October 14, 2013. The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

In this case the Landlord was told that the Tenant is no longer capable of handling her own affairs. Therefore, I Order the Landlord to serve the Tenant the Order of Possession by posting it to the rental unit door, pursuant to section 89 of the *Act*. The Landlord will then be able to regain possession and must treat any of the Tenant's possessions that remain in the unit as being abandoned, in accordance with the Regulations. A copy of the section of the Regulations which deals with abandoned property has been posted at the end of this decision.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenants**. This Order is legally binding and must be served to the Tenant by posting it to the rental unit door.

The Landlord has withdrawn their request for a Monetary Order for unpaid rent, with leave to reapply.

The Landlord may withhold \$50.00 from the Tenant's security deposit, as full compensation for the \$50.00 filing fee, as awarded above.

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: November 29, 2013

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Residential Tenancy Branch

## **Part 5 ♦ Abandonment of Personal Property**

### **Abandonment of personal property**

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
  - (b) subject to subsection (2), the tenant leaves the personal property on residential property
    - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
    - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
  - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

### **Landlord's obligations**

- 25** (1) The landlord must
- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
  - (b) keep a written inventory of the property,
  - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
  - (a) the property has a total market value of less than \$500,
  - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
  - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

### **Tenant's claim for abandoned property**

- 26** (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to
- (a) reimburse the landlord for his or her reasonable costs of
    - (i) removing and storing the property, and
    - (ii) a search required to comply with section 27 [*notice of disposition*], and
  - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

### **Notice of disposition**

- 27** (1) For the purposes of this section:

**"financing statement"** has the same meaning as in the *Personal Property Security Act*;

**"security interest"** has the same meaning as in the *Personal Property Security Act*;

**"serial number"** has the same meaning as in section 10 of the *Personal Property Security Regulation* [*collateral described by serial number*] made under the *Personal Property Security Act*.

- (2) Not less than 30 days before disposing of an item of personal property referred to in section 24, the landlord must
  - (a) give notice of disposition to any person who
    - (i) has registered a financing statement in the Personal Property Registry using the name of the tenant or the serial number of the property, and
    - (ii) to the knowledge of the landlord, claims an interest in the property, and
  - (b) publish the notice in a newspaper published in the area in which the residential property is situated.
- (3) The notice referred to in subsection (2) must contain
  - (a) the name of the tenant,
  - (b) a description of the property to be sold,
  - (c) the address of the residential property,
  - (d) the name and address of the landlord, and
  - (e) a statement that the landlord will dispose of the property unless the person being notified takes possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person.
- (4) The notice referred to in subsection (2) must be given in accordance with section 72 of the *Personal Property Security Act*[*service of statements, notices and demands*].

### **Holder of a security interest**

- 28** (1) When a notice referred to in section 27 (2) has been served on a person who holds a security interest, the tenant is deemed to be in default of the obligation secured.
- (2) Before taking possession of the property, the person who holds a security interest must pay to the landlord moving and storage charges incurred by the landlord under this Part.

### **Disposal of personal property**

- 29** (1) For the purposes of this section, "**administrator**" has the same meaning as in the *Unclaimed Property Act*.
- (2) If a landlord has complied with section 25 [*landlord's obligations*], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,

- (a) a person referred to in section 27 (2) [*person entitled to notice of disposition*] who has been given a notice as provided in that section has taken or demanded possession of the property,
  - (b) a person who holds a security interest in the property has taken or demanded possession of the property, or
  - (c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.
- (3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to
  - (a) reimburse the landlord for his or her reasonable costs of
    - (i) removing, storing, advertising and disposing of the property, and
    - (ii) a search required to comply with section 27 [*notice of disposition*], and
  - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.
- (5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.
- (6) The purchaser of personal property disposed of in accordance with this Part acquires a marketable title free of all encumbrances on payment of the taxes owing in relation to the personal property or the sale.
- (7) On the application of an interested person, a court may make an order
  - (a) prohibiting or postponing disposition of the property under this section on any conditions the court considers appropriate,
  - (b) determining the right of a person claiming an interest in or right to possession of the property or the right of the landlord to dispose of it, or
  - (c) that an action be brought or an issue be tried.

### **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.



