



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a tenancy. The Tenant applied for:

- an order for the Landlord to return their personal property; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord on October 28, 2021 by registered mail. The Landlord confirmed they received it on an unknown date, and in enough time to prepare for the hearing. In accordance with section 90 of the Act, I find the NDRP and evidence deemed received by the Landlord on November 2, 2021. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord did not serve any responsive evidence on the Tenant.

### Issue to be Decided

Is the Tenant entitled to an order for the Landlord to return their personal property?  
Is the Tenant entitled to the filing fee?

### Background and Evidence

The parties agreed on the following about the tenancy. There was no written tenancy agreement; the tenancy began on April 28, 2020; rent was \$1500.00, due on the first of the month; the Tenant paid a security deposit of \$750.00, which the Landlord still holds.

The Tenant testified they understood the tenancy would end on October 1, 2021; the Landlord testified the Tenant moved out of the rental unit at the end of February 2021 without advising the Landlord.

The Tenant testified that when they had difficulty paying rent, the Landlord consented to the Tenant subletting the rental unit beginning February 2021. The Tenant testified they left their belongings in the unit for the subtenants to use. The Tenant testified they understood their agreement with the Landlord was that the Tenant could pick up their belongings from the rental unit on October 1, 2021, when the subtenants moved out. The Tenant testified that when they contacted the Landlord to pick up their belongings, the Landlord told the Tenant not to come onto the property. The Tenant testified they have been living out of their van and in Airbnbs for two months because they don't have their belongings and cannot afford to replace them.

The Landlord testified the Tenant "took off" at the end of February 2021, and that the Landlord was surprised to find the subtenants living in the rental property. The Landlord vehemently denied granting the Tenant permission to sublet the rental unit. The Landlord testified that the subtenants moved in on March 1, 2021. The Landlord testified that when he discovered the subtenants, the Landlord initially told them to move out, but then signed a tenancy agreement with them for March 1, 2021 to September 30, 2021.

The Landlord testified that after they signed a tenancy agreement, the new tenants moved possessions from the rental unit into the Landlord's garage. While the Landlord confirmed they still have the possessions in the garage that were moved by the new tenants, the Landlord indicated they don't know what specific items are in the garage, or whose possessions they are.

### Analysis

During this hearing, I heard conflicting verbal testimony from the parties as to whether the Landlord granted the Tenant permission to sublet the rental unit, and whether there was an agreement between the Landlord and Tenant for the Tenant to collect their belongings from the rental unit on October 1, 2021. In cases where two parties to a dispute provide plausible accounts of events or circumstances related to a dispute, the

party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Tenant.

I have reviewed the documentary evidence submitted by the Tenant, and find there is insufficient evidence before me to prove to my satisfaction that the Landlord granted the Tenant permission to sublet the rental unit, and that there was an agreement between the Landlord and Tenant for the Tenant to collect their belongings from the rental unit on October 1, 2021.

Residential Tenancy Regulation 24 states:

**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 the tenant has vacated after the tenancy agreement has ended, or

...

I accept the Landlord's affirmed testimony that they believed the Tenant had abandoned the rental unit, and that the Landlord did not agree the Tenant could sublet the rental unit.

I find this tenancy ended on March 1, 2021, the date the Landlord signed an agreement with the new tenants.

I accept the Landlord's affirmed testimony that the new tenants moved possessions from the rental unit into the Landlord's garage, and that the Landlord doesn't know what specific items are in the garage, or whose possessions they are.

Residential Tenancy Regulation 25 states:

**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,

...

I find that as the Landlord cannot confirm which of the Tenant's possessions are in the garage, and that all of the Tenant's abandoned possessions were safety stored, the Landlord did not meet their obligations under the regulation.

Therefore, I find the Landlord must return the Tenant's personal property.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in their application, I order the Landlord to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

### Conclusion

The Tenant's application is granted.

I order the Landlord to return the Tenant's personal property with due care and as soon as possible, on a mutually agreed upon day and time, and no later than December 15, 2021.

I hereby grant the Tenant a monetary order for \$100.00. The monetary order must be served on the Landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 02, 2021

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Residential Tenancy Branch