



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, AAT, LAT, RPP

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 9, 2022, wherein the Tenant sought the following relief:

- an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use, issued on November 1, 2022 (the "Notice");
- an Order for access to the rental unit;
- an Order authorizing the Tenant to change the locks on the rental unit; and,
- return of the Tenant's personal property.

The hearing of the Tenant's Application was scheduled for 9:30 a.m. on March 23, 2023. Only the Tenant called into the hearing. The Tenant confirmed that he did not serve the Landlord until approximately a week prior to the hearing as he did not understand he was required to do so.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5

Section 89 of the *Residential Tenancy Act* provides as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As the Tenant failed to serve the Landlord in accordance with the above, I find the Tenant did not give the Landlord proper notice of the hearing before me. One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them and an opportunity to attend the hearing and make submissions in defense of the claims made. The *Act* contains specific rules about service in section 89 to ensure that this principle is observed.

In the normal course I would dismiss the Tenant's Application with leave to reapply. However, in this case the Tenant confirmed that he had secured alternate accommodation and did not wish to proceed with his Application to dispute the Notice. He stated that the Landlord was aware he intended to move out by April 30, 2023 and would not be seeking to cancel the Notice. The Tenant confirmed the Landlord asked him to cancel the hearing, and he informed the Landlord he would call in to withdraw his Application. **I therefore record the Tenant's Application as withdrawn.**

The Tenant expressed concerns about being able to remove all of his possessions by April 30, 2023 as he has items stored within a barn on the property. He stated that he discussed this with the Landlord and wanted to ensure that any remaining items would not be disposed of by the Landlord.

I reminded the Tenant that it was his obligation to ensure the rental unit was left clean and undamaged and that he removes all his items when the tenancy ends. I further informed the Tenant that should any items be left the Landlord must deal with them in accordance with Part 5 of the *Residential Tenancy Regulation* which reads as follows:

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 the tenant 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 the tenant has not paid rent, or

(ii) from which the tenant has removed substantially all of the tenant's 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.

[am. B.C. Reg. 64/2021, ss. 2 and 3.]

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 the tenant's 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 the landlord's 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.

[am. B.C. Reg. 64/2021, s. 8.]

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 the person's 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), the landlord may retain proceeds of the sale sufficient to

(a)reimburse the landlord for the landlord's 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.

[am. B.C. Regs. 234/2006, s. 19; 64/2021, ss. 2 and 3.]

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.

Repealed

31 Repealed. [B.C. Reg. 234/2006, s. 20.]

Should either party have any questions regarding the above they are encouraged to consult our website or call the Residential Tenancy Branch and speak to an information officer.

Conclusion

The Tenant's Application is withdrawn.

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 24, 2023

Residential Tenancy Branch