

DISPOSAL OF TENANTS' POSSESSIONS

The *Residential Tenancies Act, 2006* (the "RTA") addresses three situations where a residential landlord may be left with a tenant's personal property and stipulates how a landlord is required to dispose of those possessions. They are outlined as follows:

Situation #1: When a Tenant Abandons a Rental Unit:

A landlord may be faced with the discovery of a rental unit that has been abandoned by the tenants. First, a landlord must determine if a unit is "abandoned". A unit cannot be considered abandoned if the tenant is NOT in arrears of rent (in accordance with the provisions of the RTA guidelines). If the tenant is in arrears, the landlord should consider other evidence of abandonment in accordance with the Landlord and Tenant Board (the "Board") Guideline 4 "Abandonment of a Rental Unit" such as a vacant or nearly vacant rental unit, others seeing furniture and personal possessions moved out of the rental unit, uncollected mail, phones disconnected, reports that the tenant was seen moving or told other tenants or the superintendent they were going to move, etc.

Where the landlord believes a tenant has abandoned a rental unit and has left behind possessions, section 79 of the RTA allows the landlord to **apply to the Board for a determination as to whether or not a tenant has abandoned** his/her rental unit.

An L2 Application is issued and the landlord asks for an order terminating the tenancy on the grounds that the tenant has abandoned the rental unit. If the Board is satisfied that the unit is abandoned, it will issue an order for termination. Once this order is issued, the landlord may dispose of the tenant's possessions in accordance with the provisions of the Order.

Situation #2: A Tenant is Evicted:

If the tenant is evicted pursuant to a Board order, the landlord shall make the tenant's property available to the tenant for **72 hours** after the eviction.

Situation #3: A Tenant Vacates Pursuant to a Notice of Agreement to Terminate:

If a tenant vacates a rental unit in accordance with a notice of termination given by the landlord or the tenant, or an agreement between the parties to terminate the tenancy, the landlord may **immediately dispose of the tenant's belongings** after the tenant has vacated. Landlords must be careful to ensure that the tenant does not intend to return to pick up a few last items. The strongest indication that a tenant has vacated is that they have returned the keys. Prudent landlords should hold onto belongings for longer the 72 hours whenever possible.

If the landlord complies with these provisions, it should not be liable to account to the tenant for the disposal of the tenant's belongings. However, the landlord and tenant may make an agreement with respect to the disposal of the tenant's belongings that are different than the provisions of the RTA. Landlords must be sure that there is no misunderstanding or implied agreement with the tenant so that the tenant believes s/he has a longer period of time than those set out in the RTA to collect possessions left behind. Notably, courts tend to hold landlords to a high standard of conduct. That is, despite the provisions of the RTA, courts have found that at common law, landlords must still act **reasonably**. Therefore, if the belongings appear to be of value, they should be stored if at all possible. If items are left behind, the landlord should attempt to contact the tenant on more than one occasion and as many ways as possible. Create a paper trail wherever possible. Photograph belongings before they are disposed of.

E.& O.E.

This commentary is intended to provide general information only and not to provide legal advice for a particular legal issue. Legal advice from a qualified legal services provider should be obtained for specific legal problems.