



Helping clients keep
their belongings

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HELPING CLIENTS KEEP THEIR BELONGINGS

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WHY DOES THIS MATTER?

- The regulation of people's belongings intersects with the regulation of their physical presence in the precarious spaces they are forced into. As individuals carry things and depend on those things for their survival, exclusionary rules that apply to their belongings will directly impact their own ability to occupy certain spaces.
- The legal governance of the personal belongings of the poor is widespread. For many the loss or destruction of possessions is endemic.

Governing the Belongings of the Precariously Housed: A Critical Legal Geography. By Nicholas Blomley, Alexandra Flynn, and Marie-Eve Sylvestre. *Annu. Rev. Law Soc. Sci.* 2020. 16:165–81

INTRODUCTION

- For many people who are precariously housed and people who are houseless, belongings are located on the land (and thus under the control) of private and public agents, such as landlords, non-profits, corporations, and governments.
- As people move between these spaces, their possessions become subject to the will of others, such as police officers, landlords, transit authority personnel, bylaw officers, debt collectors etc.

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WHY DOES THIS MATTER?

- The governance of possessions by others often places vulnerable people in situations of enhanced precarity.
- Health problems may be exacerbated by property seizure (medications lost, tents seized etc.).
- Policing practices that result in the seizure of drug paraphernalia and evictions directly undermine the right to health for people who use drugs, including increased risks of overdoses, relapses, and disease.

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WHY DOES THIS MATTER?

- It takes time to accumulate belongings and may be difficult to acquire replacements.
- Principles of equality and equity are violated. Personal belongings of housed people are far more protected than the belongings of people who are precariously housed or homeless.
- Discriminatory practices that fall heavily on BIPOC communities, LGBTQ2S+ communities, people with disabilities, and women, who tend to be overrepresented among the precariously housed and houseless (this unfolds in intersectional ways).
- The seizure or destruction of personal property risks underplaying the significance and value of belongings to their owners, denying their dignity as human beings.

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WHY DOES THIS MATTER?

- Certain spaces become highly contested and regulated sites (e.g. some non-profit housing providers restrict the amount of possession a tenant can bring into their buildings, encampments, sidewalks etc.).
- Shelter spaces can also be restrictive with limited recognition of the value belongings may have to their owners (disposing of property 30 days after a person has left, not providing a place to safely store items).
- The governance of belongings often becomes a form of governance of people through things.
- Law does not provide many protections for the belongings of people who are precariously housed and people who are houseless.

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CAN A LANDLORD TAKE A TENANT'S PROPERTY?

What is a bailee at common law?

- The law of bailment in BC is set out in *Coast Crane Ltd. v. Dominion Bridge Co. Ltd. et al.*, *British Columbia Power Commission v. E.B. Investments Ltd. et al.* [1961] B.C.J. No. 128; 28 D.L.R. (2d) 1961 (“*Coast Crane*”) where the Court states:

- In *Paton on Bailment*, 1952, p. 4, the learned author quotes as a definition "which has stood the test of time" the following words as definitive of bailment:
 - Any person is to be considered as a bailee who otherwise than as a servant either receives possession of a thing from another or consents to receive or hold possession of a thing for another upon an undertaking with the other person either to keep and return or deliver to him the specific thing or to (convey and) apply the specific thing according to the directions antecedent or future of the other person.

CAN A LANDLORD TAKE A TENANT'S PROPERTY?

A landlord can be a bailee

- In *Bello v Ren*, 2009 BCSC 1598 [*Bello*], the Court states:
 - [12] Mr. Bello was away from his apartment for three to five days due to an emergency hospitalization. An absence of a few days in these circumstances does not constitute an abandonment of goods within the meaning of s. 24(1) and indeed no such finding was made by the Dispute Resolution Officer. To the contrary, she noted at page 2 of the Reasons that the Landlord's evidence was that the tenant "did not vacate" after service of the Residential Tenancy Branch's order of possession.

CAN A LANDLORD TAKE A TENANT'S PROPERTY?

- [15] Section 91 of the *Residential Tenancy Act* provides that: “except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.” Absent abandonment, the Landlord did not have statutory authority to remove Mr. Bello’s goods from his apartment. The Landlord was therefore a bailee at common law and owed a duty of care to Mr. Bello. Disposing of Mr. Bello’s goods by taking them to the dump, particularly when he knew that Mr. Bello wanted those goods and was trying to retrieve them, is a gross breach of that duty.

CAN A LANDLORD TAKE A TENANT'S PROPERTY?

- Pursuant to s 26 (3) of the *RTA*, whether a tenant pays rent in accordance with the tenancy agreement, a landlord must not:
 - (a) seize any personal property of the tenant, or
 - (b) prevent or interfere with the tenant's access to the tenant's personal property.

DAMAGES

What are the damages for for breach of a bailee's duty of care at common law?

Restitutio in integrum (restore the injured party)

- In *Ashton v. Strata Corp.* VR524, [1999] B.C.J. No. 2429 (Prov. Ct.), the Court stated:
 - [49] The underlying principle in awarding damages is restitutio in integrum - to place the injured Party in the position he was in before the damage occurred, as best as can be done. In determining the proper measure of damages, the award must be reasonable both to the plaintiff and to the Defendant.
 - [50] The assessment of damages is a question of fact and based on the evidence, with the onus on the claimant to prove the value of his loss on a balance of probabilities.

DAMAGES

- All circumstances should be taken into account in arriving at a value for the lost goods, as set out in *Hislop Estates v. Western Oil Services Ltd.*, 1978 CanLII 2577 (BC SC), [1978] 2 W.W.R. 632 (B.C.S.C.) (confirmed in *Bello* at para 17).
- In *Bello*, the Court stated:
 - [19] The Dispute Resolution Officer had Mr. Bello's oral evidence about his lost property as well as a written list with estimated values. While the nature of the missing property and the value of the items must be proved by the tenant, the evidence must be weighed taking into account the difficulty a tenant faces in proving what is missing and what it is worth — a task made all the more difficult in this case because Mr. Bello's property was unlawfully seized and disposed of by the Landlord.

DAMAGES

- [18] In summary, at common law damages are awarded to put the injured bailor in the position he was in before the goods were lost or damaged. In the absence of contract, the most the bailor can recover is replacement cost or repair cost. However, account must be taken of all the circumstances, especially when accurate information is not available. Sometimes market value must be used, and sometimes intrinsic value. “Betterment” must be accounted for when replacing old items with new ones.

DAMAGES

Detinue

- When a person refuses to return personal property upon the request of a person entitled to it without justification.
- In *Schaffner v. Insurance Corporation of British Columbia*, 2016 BCSC 1186, the Court stated:
 - [11]...A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them, and who, upon proper demand, fails or refuses to deliver them up without lawful excuse.
- Even if property is returned, a tenant may be able to request nominal damages for wrongful detention of their belongings.

DAMAGES

Conversion

- Conversion involves taking, using or destroying someone else's personal property in a way that is inconsistent with the owner's ownership.
- In *Ask v. Mikolas*, 2010 BCSC 127 [*Mikolas*]. Mr. Justice Cullen, described the legal test for conversion:
 - [126] The elements that must be proven to establish the tort of conversion are:
 - (a) a wrongful act by the defendant involving the goods of the plaintiff;
 - (b) the act must consist of handling, disposing, or destroying the goods; and
 - (c) the defendant's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.

DAMAGES

- The remedy for conversion is that the defendant pay the value of the chattel at the time that it was wrongfully taken together with any consequential loss (see *Kostiuk (Re)*, 2002 BCCA 410 at para. 66).
- In *Mikolas*, the Court stated:
 - [28] ...While the law typically takes market prices as the basis of valuation of property, it does so only because such prices are generally good evidence of its value to the owner... However, the basic rule of compensation is not market value, but *value to the owner*, and where the owner can demonstrate that the property had greater actual value, that actual value will be compensated.

DAMAGES

- [29] Value attributed to the owner beyond market value cannot be an unreasonable amount (see *Rawson* at para. 19). Further, an award of damages in tort generally does not take sentimental value into account, except in special circumstances, such as where there is a claim for mental distress or a deliberate act of wrongdoing (see *Smith v. British Columbia*, 2011 BCSC 298 at paras. 41–44).
- [30] For conversion of property that is deemed worthless, the court may award nominal damages. In *Georgian Bluffs (Township) v. Moyer*, 2012 ONCA 700, the Township removed and destroyed wood pallets that they regarded as an eyesore from the plaintiff's property. The Ontario Court of Appeal found that, although the pallets had no market value, the plaintiff was entitled to nominal damages for the conversion.

DAMAGES

An arbitrator may offset any damages to a tenant for disposal of belongings if rent is outstanding.

Damages under the RTA

- Pursuant to s 60 (1) of the RTA, an application for damages must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- Section 67 of the RTA, establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order the party to pay compensation to the party who suffered the loss or damage.
- Damage and loss includes damage to a person, including both physical and mental.

DAMAGES

- Section 7 of the *RTA*, states the party claiming the loss or damage bears the burden of proof.
- In order to determine whether compensation is due, the arbitrator may determine whether (see RTB Policy Guideline #16: Compensation for Damage and Loss):
 - A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
 - Loss or damage has resulted from this non-compliance;

DAMAGES

- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
- An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward and can award nominal damages and aggravated damages.

DAMAGES

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

“ABANDONED” PROPERTY

- Abandoned property, is property for which the owner has intentionally relinquished all rights.
- Definitions are critical and regarding laws and cases that concern the belongings of people who are houseless and people who are precariously housed, this includes whether their belongings are deemed to have been “abandoned,” “lost,” or “misplaced.”
- In Canada, section 7 of the Charter of Rights and Freedoms (1982) protects “life, liberty and security of the person,” expressly omitting property as a protected ground.
- In contrast, In the United States, the Fourteenth Amendment forbids the state from depriving “any person of life, liberty, or property, without due process of law.”

“ABANDONED” PROPERTY

- Although the constitutional protection of belongings has not yet been recognized in Canada, two cases (*Vancouver (City) v Wallstam*, 2017 BCSC 937 and *Nanaimo (City) v. Courtoreille*, 2018 BCSC 1629) may help advance a future argument that personal possessions are critical to the life, liberty, and security of the person.

“ABANDONED” PROPERTY

Abandonment of property under the RTA

- Section 44 (1) (d) of the RTA, states a tenancy ends if the home is abandoned.
- Pursuant to s 24 (1) of the Regulation, 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.

“ABANDONED” 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.

“ABANDONED” PROPERTY

Is the home abandoned?

- The landlord may treat the home as abandoned if:
 - The tenant passes away and no action has taken place by the estate of the deceased, and rent hasn't been paid in one month;
 - It appears the belongings were intentionally left behind (e.g. grouped together in boxes, location of the items, belongings left unprotected);
 - The tenant does not demonstrate an intention to retrieving belongings (e.g. vague timelines for retrieval, failing to communicate, not showing up on an agreed upon date); and
- The tenant is awaiting placement in a care facility.

DAMAGES

- In *Billion v Vaillancourt*, 2016 ONSC 5820, the Court stated:
 - [13] ...In *Mputu v. Wright*, [2004] O.J. No. 6055 (S.C.J.) Wilson J. held at paragraph 41 that: “Landlords that fail to act reasonably in the circumstances face risk of liability.” She further held at paragraph 39 that circumstances of the case before her that, “reasonable positive steps should be taken to make arrangements for the tenants to remove their belongings...A landlord must act reasonably. A landlord cannot simply ignore attempts on behalf of the tenant to contact him or turn a blind eye to what he knows is not simple abandonment of property. The landlord’s conduct in this case was egregious and easily meets any test for abuse of process.

“ABANDONED” PROPERTY

Landlord has a duty of care when dealing with personal belongings

- Pursuant to s 24 (3) of the Regulation, if personal property is abandoned, the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with the following.
- Pursuant to s 25 (1) of the Regulation, 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.

“ABANDONED” PROPERTY

- (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).

“ABANDONED” PROPERTY

- Pursuant to s. 30 of the Regulation:
 - 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.

“ABANDONED” PROPERTY

Tenant's claim for abandoned property

- Pursuant to s 26 (1) of the Regulation, If a tenant claims their property at any time before it is disposed of, 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.

SEIZING PETS

- If there are pets in a home, and nowhere for the pets to be placed, bailiffs will call animal control and the pets will be taken to a shelter.
- Vancouver Humane Society is partnering with social service agencies to break down the barriers and support the pets of women who are seeking housing or maintaining their housing while caring for a pet in crisis.
- COV states to claim your unlicensed dog from the Vancouver Animal Shelter, you must:
 - Provide proof of ownership, which can include:

SEIZING PETS

- Adoption or purchase paperwork; and
- Vet records with both the dog and owners' information License information from another municipality.
- Have government issued picture identification;
- Pay the unlicensed impound fee;
- Purchase a dog license. If you do not live in Vancouver, you must show proof of a license from another municipality ; and
- Bring a leash and collar.

SEIZING PETS

- Daily boarding fees will apply 24 hours after contact with the owner.
- The fee to retrieve your dog depends on if it is licensed and aggressive.
- Pickup fee:
 - \$188.00 + \$45.00 for an unlicensed dog and \$96.00 for a licensed dog; and
 - \$443.00 + \$45.00 for an aggressive, unlicensed dog.
- Boarding fees:
 - Depends on the animal.
 - \$25.00/day for a non - aggressive dog; and
 - \$33.00/day for an aggressive dog.

BAILIFFS

- To forcibly evict a tenant, a landlord must file the order of possession with the BC Supreme Court Registry (or court services online) and get a document called a writ of possession from the Court. This is a very quick process. Often a landlord will be issued the writ of possession the same day they file for it.
- Once a landlord has a writ of possession, they can hire a court bailiff to enforce the eviction by removing your belongings and changing the locks.
- Landlords do not need to serve the writ of possession in advance. Landlords do not have to provide notice of a bailiff's entry.

BAILIFFS

Role of the court-appointed bailiff

- Court bailiffs are the only people who are allowed to enforce an eviction by removing you and your belongings from a rental unit and changing the locks. If necessary, a court bailiff can even physically remove you from the property.
- Court bailiff companies must be contracted under the Ministry of the Attorney General.
- A list of court bailiff companies by region can be found on the BC government website.

BAILIFFS

Role of the police

- The police do not have the authority to evict tenants. However, a court bailiff may ask them to attend an eviction to keep the peace while a tenant is being removed.
- Be aware of unlicensed bailiffs (e.g. Vancouver Eviction Service).
 - Tenant can request compensation for damage and loss when a landlord hires an unlicensed bailiff; and/or
 - May also be violations of trespass laws.

BAILIFFS

Can a court bailiff sell a tenant's belongings?

- A court bailiff can sell a tenant's personal property, but there are exceptions.
- The landlord is responsible for paying the court bailiff, which could cost between \$1200 and \$1500. Court bailiffs have the authority to seize and sell belongings to recover the cost of their services.
- Pursuant to s 71.1 of the *Court Order Enforcement Act*, some belongings are exempt from being seized and sold by court bailiffs. These exemptions include:
 - Necessary clothing for a person and their dependents;
 - Medical and dental aids for a person and their dependents;

BAILIFFS

- \$4000 worth of household furnishings and appliances;
 - A vehicle worth up to \$5000;
 - Tools or other items that a person requires for work, worth up to \$10,000; and
 - Works of art or other objects of cultural or historical significance brought into British Columbia for temporary public exhibit.
-
- If there is a dispute about the value of the items selected for exemption, sections 74 to 78 of the *Court Order Enforcement Act* provides a method for appraisal.

BAILIFFS

- The value of assets which are exempt relates to the current value, not the new or replacement value.
- Court bailiffs are supposed to provide tenants an opportunity to claim their exemptions when they first attend the home.
- A tenant must claim their exemptions within two days after the seizure of their belongings or notice of it, whichever is later, of the date they found out their belongings were seized.

BAILIFFS

- A bailiff may leave belongings they believe to be of no value (e.g. garbage) , in the home.
- A bailiff may deny a tenant's claim for exemptions if the are taking placing the belongings in safe storage.
 - Unclear how taking the exempted belongings does not amount to a" forced seizure" under the *Court Order Enforcement Act*.
- Tenants must retrieve their belongings all at once, cannot make multiple trips to the storage facility.

BAILIFFS

Can the court bailiff charge the tenant fees?

- The landlord pays the court bailiff fees, however a landlord can apply to the RTB for dispute resolution to recover the cost of those fees.
- The storage facility cannot charge a fee to release their belongings that have been placed in safe storage (be aware of attempts to mislead).
- Landlord is responsible for storage fees. Landlord can attempt to recover these fees by applying to the RTB, but they must mitigate their losses.

BAILIFFS

- *Vertone v. Peden, 2000 BCPC 101:*
 - [11] I find the bailiff's costs were unnecessary and unfortunate and dismiss the claim to recover those costs. To win an argument in a civil court is one thing, to gloat about it is quite another, but eagerness to inflict hardship has every appearance of vindictiveness. Had the landlord, despite whatever he thought was aggravation or provocation, been able to extend a simple courtesy to the tenants and talk to them, if not in person at least through counsel, he would have learned that the tenants understood their remedies had been exhausted and that they had signed a rental agreement for another property.

BAILIFFS

- [12] Since the bailiff's expenses were unnecessary the one portion of the counterclaim for lost and damaged goods as a result of the goods packed and moved by the bailiffs is allowed.

What can a tenant do if their belongings are damaged or stolen while in the bailiff's care?

- Tenants are first expected to first try to resolve it directly with the company. If you can't reach an agreement with the company, you can report your concern to the Contract Administrator Court Bailiff Program, Peter Hamilton, at: Peter.Hamilton@gov.bc.ca

BAILIFFS

- A tenant can obtain a stay on the writ of possession. If a bailiff has already removed the tenant's belongings and changed the locks, a tenant can ask for a order to regain access to the unit and for their belongings to be returned.
- *Goodman v Pavlovic*, 2021 BCSC 1503:
 - [76] I have also taken into account the conduct of the landlord and his agent, the bailiff. The bailiff should have paused his removal efforts when he learned a court order had been granted staying the Order of Possession. Instead, the bailiff sped up his efforts to evict the petitioners in an effort to thwart the order. This conduct cannot be encouraged.

SEIZURE BY POLICE

When can police seize belongings?

- Pursuant to s 489(2) of the *Criminal Code*, the police should only seize property if it is connected to a crime:
 - Was obtained by the commission of an offence (e.g. stolen, bought with proceeds of a crime);
 - Was used in the commission of an offence (e.g. a weapon) and/or;
 - Will give evidence in relation to an offence.

“Know your Rights: A Guide for People who Rely on Public Space” by Pivot Legal Society

SEIZURE BY POLICE

Illegally owned property

- This type of property may be destroyed and will not be returned.

Lawfully owned property

- Police rarely provide paperwork when seizing belongings.
- May have parties sign a waiver called “a waiver of voluntary relinquishment”. The police may threaten a party with arrest if they do not sign the waiver.
- If property is seized, and no charges are laid, can try to call the local police property office and ask them to return the property.

“Know your Rights: A Guide for People who Rely on Public Space” by Pivot Legal Society

Hebert v. Balderston (2020 BCPC 43). Relevant paragraphs are 229-235.

<https://www.pivotlegal.org/know-your-rights-handbook>

<https://www.tapsbc.ca/post/bailiff-at-the-door>