

## “Abandoned Goods” Require Abandoned Premises or Expired/Terminated Tenancies Plus Vacated Premises

**By:** Jonnette Watson Hamilton

**Cases Commented On:** *Wilderdijk-Streutker v Zhao*, [2017 ABPC 24 \(CanLII\)](#) and *Shearer v Shields*, [2017 ABPC 108 \(CanLII\)](#)

A landlord can dispose of the belongings that a residential tenant has left behind at the rented premises if those belongings meet the definition of “abandoned goods” in section 31(1) of the *Residential Tenancies Act*, [SA 2004, c R-17.1](#). That section says “abandoned goods” are goods left at residential premises by a tenant who has either abandoned the premises or has vacated the premises after their tenancy has expired or been terminated. Two recent Provincial Court judgments discuss whether a tenant’s belongings were “abandoned goods” or not. In both judgments, the landlords were found to have acted rashly and the tenants were found to have not abandoned their belongings. However, only one of the judgments considers whether the belongings were “abandoned goods” by paying attention to the definition in section 31(1) of the *Act*. That definition requires that the focus be on the premises and the tenant’s legal relationship to those premises, and not on the belongings themselves.

### Law

Section 31 of the *Residential Tenancies Act*, governing what a landlord can and must do about abandoned goods, is quite lengthy. The key provision in these two cases was the definition of “abandoned goods:”

- 31(1) In this section, “abandoned goods” means goods left at residential premises by a tenant who has
- (a) abandoned the premises, or
  - (b) vacated the premises and whose tenancy has expired or been terminated.

Clearly, the key issue in deciding if belongings are abandoned or not is whether the tenant has abandoned the rented premises or has vacated them after the tenancy has expired or been terminated.

After the definition, section 31(2) goes on to say a landlord can dispose of abandoned goods if the landlord believes, on reasonable grounds, that their total market value is less than the “prescribed amount.” As both landlords disposed of their tenants’ belongings, this provision was also relevant. The “prescribed amount” is set out in section 5(1) of the *Residential Tenancies Ministerial Regulation*, [Alta Reg 211/2004](#) and it is \$2,000. Even if the value of the abandoned goods is greater than \$2,000, section 31(3) says a landlord can still dispose of them if storing them would be a problem (unsanitary, unsafe, rapid depreciation of value, or the costs would

exceed proceeds of sale). If a landlord cannot dispose of the abandoned goods under section 31(2) or (3), then a landlord must store the tenant's abandoned goods for the prescribed period of time, which is 30 days according to section 5(2) of the *Residential Tenancies Ministerial Regulation*. After the 30 days, the landlord may dispose of the abandoned goods by public auction or, with the court's approval, by private sale: section 31(4). The rest of section 31 goes on to describe what happens if the abandoned goods do not sell, what the landlord can deduct from the sale proceeds, who the landlord must turn any excess sale proceeds over to, and the records a landlord must keep: sections 31(5) – (14).

### ***Wilderdijk-Streutker v Zhao***

The first of the two Provincial Court cases, *Wilderdijk-Streutker v Zhao*, is a February 2017 decision by Judge Gordon Yake, which I commented on last month, but only on the issue of punitive damages: see "[Punitive Damages and the Residential Tenancies Act](#)."

In *Wilderdijk-Streutker v Zhao*, one of the tenant's claims was that the landlord lost, damaged or destroyed her belongings in violation of section 31 of the *Act*. The landlord defended by claiming the tenant had abandoned the rental premises and her goods by November 30, 2015.

Judge Yake started his analysis by considering whether the landlord had reasonable grounds to believe that the tenant had abandoned the rental premises (at para 60). As noted earlier, to be "abandoned goods," the premises have to be either abandoned or the tenancy has to be at an end and the premises vacated. (There was no discussion of whether the tenancy was at an end in this case, probably because rent was paid to the end of December and the tenant's belongings were still in the premises when the landlord claimed towards the end of November that the tenant had abandoned them.) On the claim of abandoned premises, [section 27](#) of the *Residential Tenancies Act* requires a landlord to have "reasonable grounds" to believe that their tenant has abandoned the premises before exercising any rights arising from abandonment.

Judge Yake found that the landlord did *not* have reasonable grounds to believe that the tenant intended to abandon, or did abandon, the rented premises (at paras 66-67). After all, the tenant had paid the rent to the end of December 2015, and on November 10 the landlord and tenant had agreed that the tenancy would terminate at the end of December. The tenant was therefore entitled to occupy the rented premises and to store her personal property and that of her family on the rented premises (at para 75). She and her family had vacated the premises due to a "noxious and problematic" and "profound" odor in the basement (at paras 30-31), but she was entitled to occupy the premises as the rent was paid. Indeed, the landlord had not only cashed the tenant's post-dated cheque for December's rent, but in November she had also requested and received the tenant's replacement cheque for December's rent which the landlord also attempted to cash. One of the landlord's main reasons for arguing that the tenant had abandoned the rented premises was that the tenant did not respond to the landlord's emails on November 25 and 28, asking the tenant to clear her family's belongings from the garage so that the rented premises could be shown to prospective tenants. But the tenant did not respond because she gave birth to her third child on November 25 and was in the hospital until December 4. New tenants were actually occupying the rental premises by December 5 when the tenant's husband went by to get some of the family's belongings. However, by December 5 the landlord had already told the new tenants to dispose of the belongings stored in the garage, and they had done so.

Because the tenant had not abandoned the rented premises at the time the landlord damaged and disposed of the tenant's belongings, the tenant's belongings were not "abandoned goods" within the definition of that term in [section 31\(1\)](#). The landlord was therefore responsible for the damage to and destruction of those belongings and Judge Yake awarded the tenant damages in the amount of \$1,500.00 (at para 81). However, he did not award any damages for the belongings of the tenant's husband because the husband was not a party to the tenant's lawsuit against the landlord (at para 82).

### *Shearer v Shields*

The later case, *Shearer v Shields*, is a May 2017 decision by Judge Paul Pharo. The tenant, Ms. Shearer, and her boyfriend rented an apartment in Coaldale from the landlords, Mr. Shields and Ms. Britz, for the period from July 1, 2015 to September 30, 2016. The apartment was in good condition when they rented it but bedbugs appeared in May of 2016 and were still in the apartment by the end of the lease.

Unlike the landlord in *Wilderdijk-Streutker v Zhao*, who acted badly enough that punitive damages were awarded against her, the landlords in *Shearer v Shields* appeared to be very accommodating until the end of the tenancy. They permitted the tenant's three dogs, including a pit bull named Diesel, to occupy the rented premises. Even after Diesel attacked the landlord's dog and bit and broke the hand of the landlord when he intervened to help his dog, the landlords only asked the tenant to put up a "Beware of Dog" sign (which she did not do). When the tenant asked if a roommate could move in after her boyfriend was sent to jail, the landlords agreed, although that roommate damaged the premises and moved out a few months later. Then the tenant asked if another roommate with two children could move in and the landlords agreed. However, permission for Diesel to occupy the premises was revoked in July 2016 after Diesel had bitten three more people and two more dogs, and so the tenant said she would look for another place to rent that would take all of her dogs. Although the lease was a fixed term one that expired at the end of September, the tenant did not leave. The landlords and tenant agreed that she could stay until October 24 for an additional \$200 in rent and a walk-through inspection was arranged for October 24.

On October 20, the Public Health Inspector inspected the apartment, issued a report saying that bedbugs were noted in one bedroom on the mattress, and instructed the tenant on how to pack up clothing and other personal items. On October 23, the tenant borrowed a truck and moved two loads of kitchen and living room items into storage. She planned to borrow the truck again on October 29 and 30. The tenant did not show for the inspection on October 24 and so it was rescheduled for October 27.

The landlords told the tenant they wanted her and her roommate's belongings out before October 27, or they would consider them to be abandoned and would dispose of them. The tenant said she had not abandoned her belongings and she would return on the weekend, when she was not working, to deal with them.

On October 27, the tenant did not show for the rescheduled inspection and the landlords changed the locks on the apartment. From October 27 on, the landlords took the position that the tenant had abandoned her goods. They refused to return them unless the tenant paid for the damages of dealing with the bedbugs and cleaning the apartment.

The landlords had the apartment fumigated twice in November, cleaned out all of the tenant's belongings in the apartment on December 6 and 7 by taking most to the dump because of the bedbugs and pet urine, and then cleaned the apartment on December 14, 15, and 16 so they could lease it out again.

One of the issues in this case was whether the landlords were entitled to keep the tenant's belongings. Judge Pharo held that the tenancy terminated on October 27 (at para 21). But he did not then turn his mind to whether the tenant had vacated the premises, as required by the definition of "abandoned goods."

Instead, Judge Pharo noted section 31 of the *Act* requires that landlords store goods worth more than \$2,000 for 30 days (at paras 23-24). He found that the landlords did not store the tenant's belongings so much as hold them as security and refuse to return them until the tenant paid for the damages to the rental premises (at para 26).

Judge Pharo held that the tenant's belongings were not abandoned (at para 28). He did so because the landlords were in contact with the tenant and knew she wanted her belongings back and was prepared to come and pick them up within a few days (at para 28).

However, whether or not the tenant abandoned her belongings is not the test in section 31(1). That section defines "abandoned goods" as "goods left at residential premises by a tenant who has (a) abandoned the premises, or (b) vacated the premises and whose tenancy has expired or been terminated. Judge Pharo did find that the tenancy had been terminated on October 27, but he did not discuss whether the tenant had vacated the premises. Neither did he discuss whether the tenant had abandoned the premises. He discussed whether the tenant had abandoned her belongings, not the apartment.

Judge Pharo went on to consider that he might be wrong and the tenant's belongings might have been abandoned because they were left behind at the end of the tenancy (at para 28). He held that the landlords "did not acquire any kind of security or proprietary interest in the belongings of Ms. Shearer by the mere fact of such abandonment" (at para 28). As he noted, section 31(4) states that the landlord "...shall store or arrange for storage of the goods on behalf of the tenant..." which clearly means that the left-behind belongings still belong to the tenant (at para 28).

As Judge Pharo also noted, if a landlord wants a security interest in a tenant's belongings, the landlord has available the common law remedy of distress (at para 29). However, that remedy is only available if the tenancy is ongoing, and the landlord and tenant in this case chose to terminate the tenancy instead.

Judge Pharo awarded the tenant \$1,000 for the value of her belongings wrongfully retained and disposed of by the landlord (at para 37). However, he awarded the landlords more than \$4,700 for changing the locks, preparing the apartment for fumigation, having the apartment fumigated twice, replacing flooring, cleaning the apartment, and for the loss of rent income for November and December while all the fumigation and cleaning was being done.

## Conclusion

Abandoned goods are not simply belongings left behind in rental premises after the date a landlord wants a tenant and their belongings gone. The definition of “abandoned goods” is dependent on the characterization of the tenancy and the residential premises, and not the belongings themselves.

*Shearer v Shields* illustrates that it is irrelevant if the tenant says she is coming back for her belongings if she has abandoned the premises or if her tenancy is terminated and she has vacated the premises. *Wilderdijk-Streutker v Zhao* illustrates it is irrelevant if the tenant has vacated the premises if the tenancy is ongoing.

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