

**Westbank First Nation
Residential Premises Law No. 2008-03**

ABANDONMENT OF PERSONAL PROPERTY REGULATION "E"
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1. Interpretation

1.1 In this regulation:

(a) "**Law**" means the *WFN Residential Premises Law No. 2008-03*;

2. Abandonment of Personal Property

2.1 A landlord may consider that a tenant has abandoned personal property where:

(a) the tenant leaves the personal property in residential premises that the tenant has given up possession of or that he/she has vacated after the tenancy agreement has ended or after the term of the tenancy agreement has expired, or

(b) the tenant leaves the personal property in residential premises:

(i) that, for a continuous period of one month, he/she has not ordinarily occupied and remained in possession of, and in respect of which he/she has not paid rent, or

(ii) from which he/she has removed substantially all of his/her personal property, and either:

(A) gives the landlord an express oral or written notice of the tenant's intention not to return to the residential premises, or

(B) by reason of the facts and circumstances surrounding the giving up of the residential premises, could not reasonably be expected to return to the residential premises.

- 2.2 Where a landlord considers that a tenant has abandoned any personal property, the landlord may remove the personal property from the residential premises, and on removal shall deal with it in accordance with this Regulation.
- 2.3 Section 2.2 does not apply where a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.
- 2.4 For the purposes of this section, “residential premises” includes an area on the residential property where a tenant has stored personal property.

3. Application of *Indian Act*

- 3.1 This Regulation is subject to section 89 of the *Indian Act*.

4. Powers and Duties of the Landlord

- 4.1 Where the landlord chooses to deal with the tenant’s personal property in accordance with this regulation, the landlord shall:
- (a) store it in a safe place and manner for a period of not less than 3 months following the date of removal,
 - (b) keep an inventory of the property, and
 - (c) keep particulars of the disposition of the property for 2 years following the date of disposition.
- 4.2 Notwithstanding subsection 4.1(a), where a landlord is entitled to remove personal property under this section and reasonably believes:
- (a) the property has no value,
 - (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, the landlord may dispose of the property in a commercially reasonable manner.²

5. Claim for Abandoned Property

5.1 Where a tenant claims his or her personal property at any time before it is disposed of under this regulation, the landlord may, before returning the property, require the tenant:

- (a) to reimburse the landlord for the reasonable costs of:
 - (i) removing and storing the property, and
 - (ii) making an application permitted and search required to be made under section 6. and
- (b) to satisfy any amounts payable to the landlord by the tenant under the Law or the tenancy agreement.

5.2 Subject to sections 5, 6 and 7 of this regulation, where a tenant makes a claim under section 5.1, but does not pay the landlord the amount the landlord requires, as permitted under that section, the landlord may dispose of the property under this Part as if the tenant had not made a claim.

6. Notice and Search for Encumbrances

6.1 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 12(3) of the *Personal Property Security Act*.

6.2 Not less than 30 days before disposing of an item of personal property referred to in section 4, the landlord shall:

- (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,
 - (ii) is registered as an owner of a manufactured home in the Manufactured Home Registry, where the property is a manufactured home, and

(iii) to the knowledge of the landlord, claims an interest in the property, and

(b) publish an advertisement in a newspaper published in the area in which the residential premises are situated.

6.3 The notice referred to in section 6.2 must contain:

(a) the name of the tenant,

(b) a description of the property to be sold,

(c) the address of the residential premises,

(d) the address where the property is being stored, if other than the address referred to in paragraph (b),

(e) the name and address of the landlord, and

(f) a statement that 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 the right within 30 days from the date the notice is given to the person, the landlord will sell the property.

6.3 The notice referred to in section 6.2 may be given in accordance with section 72 of the *Personal Property Security Act* or, where it is to be given to a person who has registered a financing statement in the Personal Property Registry or who is a registered owner of a manufactured home it is to be given as it appears on the financing statement or in the records of the Manufactured Home Registry, as the case may be.

6.4 A landlord is not required to comply with section 6.2 where the apparent value of the property is less than \$200.

6.5 A court may, on application, determine the value of the property for the purposes of section 6.4.

7. Encumbrancers

7.1 When a notice referred to in section 6.2 has been served on a person who has a security interest or other interest that secures payment or performance of an obligation, the tenant or other person owing payment or performance of the obligation shall be deemed to be in default.

7.2 Before taking possession of the property, a person mentioned in section 7.1 or any other person with a right to possession of the property shall pay

to the landlord moving and storage charges incurred by the landlord acting under section 4.

8. Disposal of Personal Property

- 8.1 Where a property mentioned in section 2. is dealt with as provided in section 4., the landlord may dispose of it in a commercially reasonable manner unless, during the 3 months referred to in section 4.,
- (a) a person referred to in section 6. who has been given a notice as provided in that section has taken or demanded possession of the property,
 - (b) a person who has an 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 section 5. or has brought an action to establish his/her interest in or right to possession of the goods and the landlord has been notified of the application or action.
- 8.2 Where a landlord sells personal property under 8.1, the landlord may retain proceeds of the sale sufficient to:
- (a) reimburse the landlord for reasonable costs of:
 - (i) removing, storing, advertising and disposing of the property, and
 - (ii) making an application permitted and search required to be made under section 6., and
 - (b) satisfy any amounts payable to the landlord by the tenant under this Law or a tenancy agreement,
- and shall pay the balance to the Public Trustee who shall hold it for 2 years in trust for any person with an interest in the property.
- 8.3 Where personal property is sold in accordance with this section, the purchaser of the personal property acquires a marketable title free of all encumbrances.
- 8.4 A landlord of a manufactured home pad who sells an abandoned manufactured home under this section shall, on request of the purchaser, provide him with an affidavit in the form prescribed under the Law.
- 8.5 Upon the application of an interested person, a court may make an order:

- (a) prohibiting or postponing disposition of the property under this section upon 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.

9. Public Trustee

- 9.1 Where a landlord pays money to the Public Trustee under section 4. the landlord shall give the Public Trustee a copy of the inventory of the personal property disposed of and written particulars of the disposition.
- 9.2 Where a tenant or other person with an interest in the property sold under section 8. does not claim an interest in the money paid to the Public Trustee within 2 years after the payment, the money is forfeited to the government.

10. Duty of Care – Abandoned Property

- 10.1 Where dealing with a tenant's personal property under this Regulation, a landlord shall 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.