



## Return of Property By Breena Murray

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Often people will leave items of personal property with someone, assuming they will be able to return for it later. However, sometimes, the person who is in possession of the property refuses to give it back. In a situation like this, the person has two different types of actions that they could bring to a court if they are unable to work things out with the other person.

The first option they have is to bring an action before the Courts for the return of their personal property. This option allows the plaintiff to regain actual possession of the items that were either unlawfully taken from the plaintiff or unlawfully detained by the defendant.

Unlawfully means that the defendant who has possession of property does not have a legal right to it. For example, *The Garage Keepers Act* of Manitoba allows a person or corporation who performs services on vehicles to retain possession of a vehicle of a person who owes money to him

for services provided, as long as the garage keeper has had continued possession of the vehicle since the services were provided for which money is owed.

So, if a garage keeper is detaining a vehicle under *The Garage Keepers Act*, he would have a legal right to possession of the vehicle. Therefore, the owner of the vehicle would not be able to bring an action for the return of the property.

While this option is tempting for plaintiffs, as they generally would rather get their property back than be compensated for it, the action for return of personal property can be very expensive. You first have to file a Statement of Claim seeking the return of the property.

Then, if you want the property back before the issue goes to trial (it can take more than a year to reach a trial, given all the steps and processes that need to be completed beforehand), you need to bring a motion for interim return of the property, pending the trial on the matter. The filing fees, as

well as lawyer fees, make this option too expensive in the majority of cases.

The second option people have is to bring an action to be compensated for the value of the property that has been detained by the defendant. This option, while it does not return the property to the plaintiff, is more practical for property that is of lesser value. If the total value of the property is less than \$10,000.00, the matter can proceed in Small Claims Court. Plaintiffs can also choose to waive any damages exceeding the limit, so they can proceed this way and save on costs.

Small Claims are a great option for plaintiffs who wish to keep their expenses at a minimum. The proceedings are informal, and often the parties in a small claim will not bring lawyers. Decisions of this court are subject to enforcement, just like decisions by the Queen's Bench. As such, wages or banks can be garnished and assets can be seized if the plaintiff is successful and the defendant refuses to pay.

Thus, while you may be seeking the return of your actual property, depending on the value of the property, it may be better to seek compensation for the property instead.