

## **RULE 44**

### **INTERIM RECOVERY OF PERSONAL PROPERTY**

#### **MOTION FOR INTERIM ORDER**

- 44.01** (1) An interim order under section 47 of the *Judicature Act* for recovery of possession of personal property may be obtained on motion by the plaintiff, supported by an affidavit setting out,
- (a) a description of the property sufficient to make it readily identifiable;
  - (b) the value of the property;
  - (c) that the plaintiff is the owner or lawfully entitled to possession of the property;
  - (d) that the property was unlawfully taken from the possession of the plaintiff or is unlawfully detained by the defendant; and
  - (e) the facts and circumstances giving rise to the unlawful taking or detention.
- (2) The notice of motion shall be served on the defendant unless the court is satisfied that there is reason to believe that the defendant may improperly attempt to prevent recovery of possession of the property or that, for any other sufficient reason, the order should be made without notice.

#### **ORDER TO CONTAIN DESCRIPTION AND VALUE OF PROPERTY**

- 44.02** An interim order for recovery of possession of personal property shall contain a description of the property sufficient to make it readily identifiable and shall state the value of the property.

#### **DISPOSITION OF MOTION**

##### **Where Made on Notice**

- 44.03** (1) On a motion for an interim order for recovery of possession of personal property made on notice to the defendant, the court may,
- (a) order the plaintiff to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves, and direct the sheriff to take the property from the defendant to give it to the plaintiff;

- (b) order the defendant to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the plaintiff security in such form and amount as the court approves, and direct that the property remain in the possession of the defendant; or
- (c) make such other order as is just.

#### **Where Made Without Notice**

- (2) On a motion for an interim order for the recovery of possession of personal property made without notice to the defendant, the court may,
  - (a) order the plaintiff to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves, and direct the sheriff to take and detain the property for a period of ten days after service of the interim order on the defendant before giving it to the plaintiff; or
  - (b) make such other order as is just.

#### **CONDITION AND FORM OF SECURITY**

- 44.04 (1) Where an interim order for the recovery of possession of personal property requires either party to give security, the condition of the security shall be that the party providing the security will return the property to the opposite party without delay when ordered to do so, and pay any damages and costs the opposite party has sustained by reason of the interim order.
- (2) Where the security is by bond, the bond shall be in Form 44A and shall remain in force until the security is released under Rule 44.06.
- (3) Where the bond is to be given, the person giving the bond shall first be approved by the court.

#### **SETTING ASIDE ORDER**

44.05 The court on motion may set aside or vary an interim order for the recovery of possession of personal property or stay enforcement of the order.

#### **RELEASE OF SECURITY**

**44.06** Any security furnished pursuant to an order made under Rule 44.03 may be released on the filing of the written consent of the parties or by order of the court.

**DUTY OF SHERIFF**

- 44.07** (1) Before proceeding to enforce an interim order for the recovery of possession of personal property, the sheriff shall ascertain that any security required by the order has been given.
- (2) The sheriff shall serve the order on the defendant when the property or any part of it is recovered or as soon thereafter as is possible.
- (3) Where the sheriff is unable to comply with the order, or it is dangerous to do so, the sheriff may move for directions from the court.
- (4) The sheriff shall, without delay, after attempting to enforce the order and in any event within ten days after service of the order, report to the plaintiff on what property has been recovered and, where the sheriff has failed to recover possession of all or part of the property, on what property has not been recovered and the reason for his or her failure to recover it.

**WHERE DEFENDANT PREVENTS RECOVERY**

- 44.08** Where the sheriff reports that the defendant has prevented the recovery of all or part of the property, the court may make an order,
- (a) directing the sheriff to take any other personal property of the defendant, to the value of the property that the sheriff was prevented from recovering, and give it to the plaintiff; and
- (b) directing the plaintiff to hold the substituted property until the defendant surrenders to the plaintiff the property that the sheriff was prevented from recovering.