



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

**DISPUTE CODES:** MNDC, MNSD

### **INTRODUCTION**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary Order for money for compensation for damage or loss under the Act, regulation or tenancy agreement; and
2. Monetary order for return of pet damage or security deposit pursuant to Section 67.

I accept that the landlord was properly deemed served with the Application for Dispute Resolution hearing package by way of registered mail.

Both parties attended and gave evidence under oath.

### **BACKGROUND AND EVIDENCE**

The tenant testified that while he was out of town his landlord moved all of his belongings from his suite and placed them under a tarp outside in the backyard. When the tenant returned from Ontario on November 17, 2008 the landlord told the tenant that the locks were changed and his belongings were in the yard. The tenant says he has been residing in a homeless shelter since this happened. The tenant says the security deposit he paid on October 1, 2008 still hasn't been returned to him. The tenant is seeking recovery of his security deposit, reimbursement for the furniture and personal items lost and/or ruined by the landlord placing them in the elements, compensation for emotional distress and a fine for an illegal eviction as follows:

Security deposit	225.00
Chesterfield and matching love seat	1,000.00
Six drawer dresser with large half moon mirror and 2 center doors of wood	350.00
Large nine-drawer dresser	100.00
Wood bed, box spring and mattress	200.00
Four slice toaster	60.00
Electric can opener	20.00
Coleman double sleeping bag	90.00
Two comforters	40.00
Pants, shirt, jeans, coats	300.00
Food	25.00
Kitchen supplies	100.00
Emotional distress compensation	3,000.00
Fine	5,000.00
<b>Tenant's total Claim</b>	<b>10,510.00</b>

The tenant provided no evidence as to how he arrived at the sums listed above. The tenant testified that most of the items, with the exception of the chesterfield and loveseat, were second hand. The tenant submitted that he believes the replacement costs he is seeking are reasonable.

The landlord testified that he served the tenant with a 10 day Notice to End Tenancy for unpaid rent of \$450.00 due for November 2008. The landlord testified that 7 or 8 days after service of the Notice the tenant received a cheque in the sum of \$450.00 from the Ministry of Housing and Social Development. The landlord testified that he returned that cheque. In evidence the landlord supplied a letter for the Ministry confirming that the cheque had been returned to them. The landlord testified that not receiving the rent within the time limit set out on the Notice to End Tenancy and not having not heard from the tenant he believed the tenant had abandoned the rental unit. The landlord testified that he therefore proceeded to remove the tenant's goods out of the rental unit and placed them in the yard under a blue tarp. Photographs of a pile covered by a blue tarp were submitted in evidence. The landlord testified that he also changed the locks to the rental unit. The landlord confirmed that he has not returned the security deposit as he used the funds to clean and repair the rental unit. The landlord confirmed he did not make application for an Order of Possession or to retain the security deposit. Agent for

the landlord submitted that the landlord does not speak English and isn't aware of the provisions of the *Residential Tenancy Act*. The landlord testified that a girlfriend of the tenant came and took goods from the pile under the tarp.

## Findings

The landlord admits that he took possession of the rental unit without making application to the Residential Tenancy Branch for an order of possession. Further, while the Act sets out the steps to be taken by a landlord with respect to a tenant's belongings where abandonment appears to have taken place, the landlord did not follow those steps either. I find that the landlord illegally removed the tenant's goods and did not store and/or dispose of them as required by the Act. With respect to the value of the goods I find that the sums sought by the tenant to be reasonable for the most part. However, the evidence of the landlord, that I accept, is that the tenant's girlfriend removed some of the goods. I will allow the tenant a monetary award in the sum of \$1,000.00 for the loss of his goods.

With respect to the tenant's claim for the return of his security deposit, upon reviewing the evidence I find that the tenant failed to provide proof that he provided his forwarding address to the landlord. I will therefore not award double the deposit but I will order the landlord return the deposit paid plus interest for a total of \$225.90.

I have also considered the tenant's claim for emotional distress. While "emotional distress" may not be the correct term, a Dispute Resolution Officer may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

In this instance the tenant arrived home to find his doors locked and his goods out in a yard under a tarp. He has been living in a homeless shelter since his tenancy ended. The landlord admits he changed the locks on the rental unit door and piled the tenant's goods out in the yard under a tarp. While the landlord's agent argued that the landlord does not speak English well and was not mindful of the requirements of the Act, I find this is not reasonable. A landlord must make himself aware of his both his rights and responsibilities under the Act. I find that in not doing this, he acted with willful and reckless indifference. Having found this, I find the tenant is entitled to aggravated damages. In considering the amount to award, I must be mindful of the depth and duration of the acts and whether these acts represented a significant influence on the wronged person's life. I must also be mindful that aggravated damages must not be punitive. I find that the effect of the landlord's actions on the tenant were substantial. I will award the tenant \$1,000.00 in aggravated damages.

With respect to the tenant's claim for a \$5,000.00 fine, while there is provision for penalties under the Act, I do not have the authority to issue these penalties and, in any event, any penalty imposed would be paid to the Province of British Columbia and not to the tenant. This claim is dismissed.

Total monetary award payable by the landlord to the tenant:

Monetary award for compensation for loss and aggravated damages	\$2,000.00
Security deposit and interest from September 25, 2008	225.90
<b>TOTAL MONETARY AWARD</b>	<b>\$2,225.90</b>

**Conclusion**

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.