

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

OLC, RPP, MNDC

### **Introduction**

The tenant's amended claim is that he seeks return of specific personal property from the landlord and return of one half (1/2) months rent in the amount of \$242.

Despite having been served with the application for dispute resolution and notice of hearing by personal service on February 25, 2009 in accordance with Section 89 of the Residential Tenancy Act (the Act), the landlord did not participate in the conference call hearing.

### **Issue(s) to be decided**

Is the tenant entitled to the personal items claimed?

Is the tenant entitled to the monetary amount claimed?

### **Background and Evidence**

The undisputed facts before me provided by the tenant under solemn affirmation are as follows:

This tenancy began on January 24, 2009. The tenant testified, and has provided a Rental Tenancy Agreement in which he rented, from 2 other co-tenants, a one third share of the rental unit at the dispute address in the amount of \$484 per month. The tenant paid a pro-rated amount of \$121 for the period of January 24 – February 01, 2009.

The tenant further submitted a rent receipt, for cash, dated February 01, 2009, for the month of February 2009, made out to the tenant and signed by the landlord representative/agent.

The tenant also provided a Shelter Information form from Employment and Income Assistance identifying the Landlord with her name and her signature confirming the tenant's tenancy at the dispute address and accepting rent for February 2009 in the amount of \$484.

On February 15, 2009, for reasons still unclear to the tenant, the landlord, with the aid of Police had him removed from the rental unit and took away his keys, and removed his property from the rental unit. Both the landlord and Police advised the tenant that he did not have a rental agreement in place and any issues he may have with their action could be taken up with the Residential Tenancy Branch.

On February 16, 2009 the tenant met with the landlord and retrieved some of his belongings, but could not collect several large items which the landlord advised the tenant she would keep in safe storage in the event the tenant received a finding or Order from this hearing. The items specifically identified by the tenant which the landlord is holding are:

- 1 48 inch Toshiba rear projection television
- 1 Sony PlayStation console and accessories
- 5 PlayStation Games

## **Analysis**

I find the Respondents in this matter are the 'Landlord' as defined in the Residential Tenancy Act, and that a Tenancy Agreement existed and was in force.

The conduct of the landlord in this matter was highly illegal. More particularly, the conduct of the landlord as described by the tenant amounted to a breach of Section 7 (1), 28 and 29 of the *Residential Tenancy Act*.

According to the tenant's testimony the landlord utilized the Police to justify the illegal behavior by stating the tenant had no rental agreement and instructing the Police to have the tenant removed. This does not excuse the landlord's behavior because Section 5 of the *Act* specifies: "Landlords and tenants may not avoid or contract out of this *Act* or the *Regulations*. Any attempt to avoid or contract out of this *Act* or the *Regulations* is of no effect."

The landlord evicted the tenant and took possession of his belongings without any form of Order by a Dispute Resolution Officer.

The tenant is entitled to one half month's rent – for the latter half of February 2009, which is the half month's rent for which the tenant paid, but did not receive occupancy for the rental unit, in the amount of **\$242**

### **Conclusion**

Under the particular circumstances of this case, **I hereby Order** the landlord to forthwith return all of the tenant's belongings to him, at no charge, on or before **April 30, 2009** – in default of which the tenant may bring a further application for further orders and for further damages. Specifically the following items are to be returned to the tenant:

- 1 48 inch Toshiba rear projection television**
- 1 Sony PlayStation console and accessories**
- 5 PlayStation Games**

**I further Order** and grant to the tenant a monetary order under Section 67, in the amount of **\$242**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

I have expressly refused to deal with any entitlement the tenant may have against the landlord herein for damages arising from the breach of Section 7 (1), 28 and 29 of the *Residential Tenancy Act*.

Dated April 17, 2009