

## **DECISION**

Dispute Codes      MNDC

### Preliminary Issues

The Owner of the company who employed the Tenant questioned whether the title of “Landlord” applied to his situation and whether the Residential Tenancy Agreement was applicable in this situation.

Both parties confirmed that the Respondent Employer provided the Applicant with living accommodations as part of his employment. The Tenant testified that he was told during the negotiations of his employment that he would be paid an annual salary and that he would be granted accommodation in the 2 bedroom apartment, located across the lane from the restaurant. The Employer confirmed this arrangement.

Section 48(2) of the *Residential Tenancy Act* lists the requirements for an employer who ends a tenancy of an employee in respect of a rental unit rented or **provided** by the employer to the employee to occupy, during the term of employment. Based on the aforementioned I found that I do have jurisdiction to hear this case and that the Applicant is a Tenant, and the Respondent is a Landlord as defined in the *Residential Tenancy Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for compensation under the Act and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, delivered personally by the Tenant to the Landlord’s office a day or two after April 27, 2009. The Landlord confirmed receipt of the hearing package but could not speak to the actual delivery of the package.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant moved into the rental unit sometime in June or July 2007 when he was first hired by the employer.

The Tenant testified that he provided his employer with his written resignation on April 3, 2009 and that he advised his employer that he would be vacating the rental unit by May 1, 2009. The Tenant argued that he was called into a meeting with the two General Managers on April 16, 2009 and that he was advised to vacate the rental unit by April 25, 2009. The Tenant stated that he returned to his accommodations and printed out information from the Residential Tenancy Branch website and returned it to the General Manager and explained again that he would be vacating the living accommodations by May 1, 2009.

The Tenant stated that on April 21, 2009 he returned to his living accommodations to find that his door was open and the General Manager and two other people were inside his home. The Tenant advised that a discussion took place during which he was told that one of the people standing in his home was the newly hired Executive Chef and that this new Chef was moving into the Tenant's home. The Tenant found that the General Manager, the new Chef and his moving friend had moved the Tenant's possessions out of the 2<sup>nd</sup> bedroom, into the hallway, and put the new Chef's possession in the 2<sup>nd</sup> bedroom. The Tenant stated that he eventually agreed to allow

the new Chef to store his possessions in the Tenant's home as there was no other storage space available to him.

The Owner argued that the Tenant failed to provide him with 4 weeks notice of his resignation and that this spoke to the nature of the relationship between the two parties.

The Owner testified that he was not present during the alleged occurrences as listed above, and he requested that I call the General Manager into the hearing as a Witness. I attempted to call the General Manager at the number provided by the Owner however the General Manager did not answer and I was connected to the General Managers' voice mail.

The Owner then requested to have the General Manager paged and to have him call into the hearing. The Owner left the hearing for a moment and returned to advise that he wished to settle for the \$550.00 amount that the Tenant was seeking and agreed to send the Tenant a cheque for this amount.

### Analysis

Given the evidence and testimony before me, in the absence of any evidence from the Landlord, who appeared but did not make prior arrangements for the General Manager to provide evidence or testimony, I accept the version of events as discussed by the Tenant.

I do not accept the Landlord's argument that the Landlord's violation was somehow excused due to the Tenant's alleged failure to provide 4 weeks notice for his resignation. Even if the Tenant was found to be in violation of some agreement he entered into with his employer, there is no provision in the Act that extends immunity for a reciprocal breach on the part of a Landlord.

I have determined that there was a complete and utter loss of the reasonable expectation of security and a right to quiet enjoyment that should be anticipated by a Tenant and that the Landlord (Employer) committed a serious and wilful breach of the

Act by entering the Tenant's residence in contravention of Section 30 of the *Residential Tenancy Act*.

The Landlord has offered to settle for the full amount claimed by the Tenant. Based on the aforementioned I hereby approve the Tenant's request for a monetary claim of \$500.00 for damages and to recover the \$50.00 filing fee from the Landlord for this application.

Conclusion

**I HEREBY FIND** in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$550.00. The order must be served on the Respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 30, 2009.

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Dispute Resolution Officer