



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPT, OLC, LAT, MNDC, FF

### Introduction

This hearing, held over two sessions, dealt with an Application for Dispute Resolution and an Amended Application by the Tenant. The Tenant is seeking an order of possession, an order for the Landlord to comply with the Act or tenancy agreement, to suspend or set conditions on the Landlord's access to the rental unit, to authorize the Tenant to change the locks on the rental unit, and for a monetary order for losses or compensation under the Act or tenancy agreement.

The first hearing, held on November 16, 2009, was adjourned to allow the joining of another party, the previous Landlord, as well as to allow the Tenant to amend his claim to include the monetary compensation claim. The second hearing proceeded on January 15, 2010, with all parties present.

The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is the Tenant entitled to the relief sought in his Application or Amended Application?

### Background and Evidence

The Tenant and the Prior Landlord entered into a written, standard form tenancy agreement on April 23, 2009. The tenancy was to start on May 31, 2009, and was to last for a fixed length of four years, ending on May 31, 2013.

In his testimony and submissions, the Tenant alleges that on August 15, 2009, he received a phone call from the Prior Landlord who requested that the Tenant move out of the rental unit for repairs that were required to the residential property. The Tenant alleges the Prior Landlord offered him three months of free rent to move out. The Tenant testified he agreed with the Prior Landlord and moved out of the rental unit on September 15, 2009, intending to move back into the rental unit in October of 2009.

Around this time the Prior Landlord, or another person, apparently informed the Tenant that the Prior Landlord was considering selling the residential property where the rental unit is located.

The Tenant alleges that when he returned to the rental unit on October 1, 2009, the locks had been changed and the Current Landlord had moved in. The Tenant told the Current Landlord that he had a four year tenancy agreement for the house. The Current Landlord informed the Tenant that he knew nothing about the lease, and neither the realtor nor the lawyer who handled the sale of the property to the Current Landlord had informed him about any lease. The Tenant insisted he had a right to move into the rental unit and there was a dispute. The Current Landlord called the police to attend to the rental unit. The police apparently informed both parties it was a civil dispute that they would not deal with.

Legal Counsel for the Current Landlord cross examined the Tenant. The Tenant acknowledged that he had business dealings with both the Prior Landlord and the Current Landlord prior to the sale and purchase of the property. The Tenant acknowledged he had sold the Current Landlord an insurance policy prior to the sale and purchase of the property. The Tenant testified that he had informed the Current Landlord that the subject property he was currently renting was for sale by the Prior Landlord. The Tenant testified that he had told the Current Landlord that he had a four year lease on the property. The Tenant also explained, on cross examination, that the realtor had picked up the keys for the rental unit from him on or about September 17, 2009.

The Current Landlord testified that he found out from the Tenant that the property was for sale, however, he insisted that the Tenant did not inform him that he had a rental agreement for the property. The Current Landlord went to look at the property and met with the realtor at the property. The Current Landlord testified that he believed the Tenant had phoned the realtor to meet with him at the property.

The Current Landlord testified that he was surprised when the Tenant showed up at the property on October 1, 2009, insisting on entering the property as he had a rental

agreement. The Current Landlord testified he did not see the written tenancy agreement between the Prior Landlord and the Tenant until on or about October 6, 2009, when he received a copy of the agreement from the Tenant. The Current Landlord alleges that when he moved into the property it was empty, as it had been on September 28, 2009, when he last viewed the property.

In reply, the Tenant denied that he initiated contact between the Current Landlord and the realtor. The Tenant further testified there was no written agreement between himself and the Prior Landlord to end the tenancy.

The Prior Landlord testified that the reason he thought the tenancy had ended was that the Tenant had breached the four year lease. He testified that the Tenant had violated the tenancy agreement when he began running a bed and breakfast operation from the property, and the Tenant had only paid the July 2009 rent and then stopped paying rent.

The Prior Landlord testified that the Tenant had introduced him to the Current Landlord. He further testified that he had told the Tenant that the rental agreement should be terminated since the Tenant had breached the lease. The Prior Landlord learned that the Tenant had removed all his property from the rental unit when his wife travelled from China for a meeting with the Tenant. The Prior Landlord testified that the Tenant refused to have a meeting with the Prior Landlord's wife after she arrived from China to attend the property. I note the wife of the Prior Landlord is also indicated as a landlord in the tenancy agreement, and was a prior owner of the property.

The Prior Landlord further testified that he thought he had an oral agreement with the Tenant to end the tenancy and the Tenant had voluntarily agreed to move out. The Prior Landlord also testified that he considered the Tenant to have abandoned the property, as he refused to meet with the Prior Landlord or his wife when they were there, and he had removed his property and had stopped paying rent. He testified that, based on all the circumstances, he considered the Tenant to have abandoned the unit and the tenancy had been terminated by fact. He further testified that he thought the Tenant might have been upset that he did not receive any money from the sale of the property, as he was the person who had introduced the Prior Landlord and the Current Landlord to each other.

In reply the Tenant testified that he had agreed that the Prior Landlord could sell the property, however, he never agreed to end the tenancy.

The realtor involved in the transaction testified he knew the Tenant had lived at the property and was informed by the Prior Landlord that his friend, the Tenant, had lived

there. The realtor testified that there was a close business arrangement between the Prior Landlord and the Tenant. He testified that the Tenant had actually helped out with an open house for the sale of the property. The realtor testified that he was informed by the Prior Landlord that the Tenant had abandoned the rental unit and he would not meet with the Prior Landlord or his wife.

The realtor further testified that he picked up the keys and a remote control for the rental unit from the Tenant, however, at no time did the Tenant mention anything to the realtor about still having a tenancy at or for the subject property.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

**I dismiss the Application for Dispute Resolution of the Tenant without leave to reapply. I find the Tenant is not entitled to any monetary compensation or to an order of possession for the rental unit.**

I find that portions of the Tenant's evidence lacked credibility. For example, it is clear from the evidence that he introduced the Prior Landlord to the Current Landlord. I find it unlikely that the Tenant would not provide a copy of the tenancy agreement to the Current Landlord during these dealings had the Tenant truly intended on asserting that his tenancy should continue. I find it would be more likely that the Tenant would have explained to the Current Landlord, from the start of the indications the Current Landlord was interested in purchasing the property, that the Tenant intended on continuing living in the rental unit after the purchase under a tenancy agreement in place with the Prior Landlord. In other words, I find it is more likely the Tenant would have asserted his tenancy rights from the beginning of his relationship with the Current Landlord if he truly believed he still had rights under the tenancy agreement.

I find the Prior Landlord did not breach the Act when he considered the tenancy had ended with the Tenant vacating the rental unit after stopping the payment of rents. I find that the Tenant did in fact abandon the rental unit and therefore, the tenancy had ended.

Under section 44(1)(d) the tenancy can be considered to have ended when the Tenant vacated the rental unit. The Prior Landlord was entitled under this portion of the Act, and with the circumstances of the Tenant not paying rent and refusing to meet with him or his wife, to consider the Tenant had abandoned the property and the tenancy.

Conclusion

The Tenant's Application is dismissed, without leave to reapply. I find the Tenant abandoned the rental unit and portions of his evidence lacked credibility. As the Tenant was unsuccessful, I do not order the return of the filing fee.

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: February 11, 2010.

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Dispute Resolution Officer