



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, ERP, RP, LRE, OPT, AAT, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order, an order of possession and orders that the landlord perform repairs, permit access to the unit and have restricted access to the unit. Both parties participated in the conference call hearing.

### Issue to be Decided

Was the tenancy ended legally?

### Background and Evidence

The parties agreed that over the last several years of the tenancy, the bathroom of the rental unit has on occasion had problems with moisture build-up which caused damage to the drywall. Approximately one year ago when this occurred, the landlord and tenant agreed that the tenant would move into a different apartment until the bathroom could be repaired. The tenant testified that in March of this year, he agreed to temporarily move out of the rental unit to permit the landlord full access to perform repairs to the bathroom. On March 30 the tenant moved substantially all of his belongings, leaving a few kitchen items as well as a mattress, two tables and a mirror. The tenant surrendered the key to the rental unit but retained the key to the front entrance of the building and the mailbox key. Approximately 6 weeks after he had moved out, the tenant went to use a new mailbox key which had been given to him by the landlord and tried the key in other mailboxes, discovering that his key could open another person's

mailbox. The tenant reported this to the landlord and testified that upon hearing that he had used his key in another mailbox, the landlord announced that the tenancy was over and demanded that the tenant return the two keys he still had in his possession. The tenant testified that he continued paying for utility and cable service to the rental unit through May as he had anticipated returning to the unit.

The landlord testified that the bathroom had been repaired a number of times and that the landlord suspected that the tenant was the cause of the moisture build-up rather than some plumbing problem or other deficiency. The landlord testified that he and the tenant agreed that the tenant would temporarily vacate the rental unit to permit repairs and that if the landlord was able to prove that the tenant had caused the damage to the bathroom, the tenancy would end. The landlord and his witness testified that on February 24 the tenant was served with a one month notice to end tenancy by posting the notice on the door of the rental unit and that it was always the landlord's intent that the notice would not be enforced if the damage were shown to be caused by something other than the tenant. The tenant denied having received the notice to end tenancy. The landlord further testified that on March 15 and 17 he put notes in the tenant's mailbox advising that his contractors had discovered that the tenant was the cause of the damage to the bathroom and requesting the return of the keys. The tenant denied having received these letters but acknowledged that he returned keys on March 17.

The landlord produced as a witness G.W. who was the contractor retained to inspect the bathroom. On June 5, G.W. wrote a letter advising that in his professional opinion, the source of the moisture build-up was from within the bathroom rather than from an outside source such as faulty plumbing. G.W. testified that he arrived at this conclusion because when he removed the drywall in the affected area, there was no moisture on the side facing the ceiling joist but only on the finished surface. G.W. testified that in his experience, a plumbing leak occurring behind the drywall would cause the unfinished surface to show water damage and that he could not imagine how that side of the drywall could have avoid damage if such a situation had occurred.

### Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. Having reviewed the evidence, I have arrived at the conclusion that the landlord's version of events is more likely to be accurate than that of the tenant. The landlord provided a witness who saw him post a notice to end tenancy on the tenant's door and the dates in the notice correspond with the date the tenant vacated. The landlord could easily have relied on the notice, but maintained his position that he was willing to reinstate the tenancy if he discovered that the tenant had not caused the recurring problem in the bathroom. The testimony of the landlord and his witnesses was forthright and consistent and I find it unlikely that the tenant would have surrendered the keys on May 17 if he had not entered into an agreement with the landlord that the tenancy would be reinstated only if it could be proven that he had not caused damage. The fact that the tenant left some of his belongings in the rental unit and continued to pay utility and cable bills for the unit shows that he was optimistic that the damage would be attributed to some outside force and I do not find that it establishes that the tenant still had possession of the unit. It would appear that the landlord was also optimistic as he permitted the tenant to maintain access to the mailbox and to his parking space. The fact that the tenant relinquished the key to the rental unit in March has further persuaded me that the tenancy ended on that date. The landlord would have his own set of keys to the unit which could have been used to grant access to trades people and there is no logical reason why the tenant's keys would have been required, particularly since the tenant left items in the unit.

I find that on February 24 the tenant was served with a one month notice to end tenancy which effectively ended the tenancy on March 31. I find that the parties had an oral agreement that the tenancy would be reinstated if it were discovered that the tenant had not caused the damage to the bathroom and find that the landlord was justified in not reinstating the tenancy. I therefore find that the tenant is not entitled to an order of possession and I dismiss that claim. As the tenancy has ended it is unnecessary for me to address the tenant's claim for orders that the landlord perform repairs, permit access

to the unit and have restricted access to the unit and therefore I dismiss those claims. As the monetary order hinges on the tenant's position that he was illegally evicted, I find that the monetary claim must be dismissed as well. I note that part of the monetary claim is for utility and cable bills paid for the period in which the tenant did not occupy the rental unit. As those bills were in the tenant's name, I find that he bore the burden of discontinuing service. The price of the tenant's failure to discontinue service cannot be visited on the landlord.

Conclusion

The tenant's claim is dismissed in its entirety.

Dated: July 08, 2010

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