

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act

Both the landlords and the tenants were present and gave testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for compensation for rent paid, losses and expenses that were incurred due to the landlord's failure to comply with the Act and agreement and was also claiming aggravated damages of \$5,000,00.

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation including aggravated damages under section 67 of the Act.. The burden of proof is on the applicant.

Background and Evidence

Testimony from both parties confirmed that the landlord and tenant had entered into a tenancy agreement on July 1, 1994. After almost 16 years of tenancy, the tenant passed away on March 29, 2010.

A representative of the Estate, herein after known as "*the tenant*", testified that the late resident's son, "G" and her daughter, "A" had been granted Power of Attorney prior to the late tenant's death and were also named as co-executor/executrix in the will. The tenant had submitted into evidence legal documents verifying this fact.

The tenant testified that in February 2010 when they found out that the illness was terminal, members of the family took turns staying in the suite with the late tenant as caregivers. The tenant testified that they requested an extra key to the unit which was reluctantly provided by the landlord. However, during the final weeks of the respite care just when the pressure was increasing, the landlord suddenly disabled the 2nd key without warning thereby making support arrangements more difficult for the family. According to the tenant, starting in the final week of the late tenant's life during which the family was in an emotional crisis, the landlord also began making persistent demands that they meet with the landlord to set up a schedule for care-giver's to use the apartment. The tenant testified that, because of the circumstances, the family did not immediately respond and the landlord continued to send letters instructing the executors meet to discuss to the tenant permanently vacating the unit.

The tenant testified that after the late tenant passed away, the landlord sent a letter dated April 1, 2010 addressed to the tenant's estate containing the following:

"It has come to our attention that our tenant....has passed away. Please pass our condolences on to her family. This will acknowledge the receipt of a cheque in the sum of Six Hundred and Seventy Seven dollars (\$677.00), dated April 1, 2010, for use and occupancy only of the subject suite to April 30, 2010. Please have the executor contact the undersigned as soon as possible to discuss the requirements for vacant possession by the end of April 2010."

The tenant testified that the April 30, 2010 end date for the tenancy referred to in the landlord's communication was never agreed to nor contemplated by them, but was unilaterally imposed by the landlord.

The tenant testified that G, one of the executors of the estate, also wrote to the landlord on April 1, 2010 advising that he would be, *"continuing the tenancy at the above noted address"* based on the fact that he had made a past application to be a co-tenant back in July 2004. This letter was in evidence. Also in evidence was a response letter from the landlord dated April 2, 2010 stating that the landlord had never accepted the late tenant's son's application to be a co-tenant and did not agree to the proposal. The April 2, 2010 letter also informed the tenant that, *"The tenancy agreement between, (the landlord) and (the late tenant) ceased with her passing"*. The latter went on to state that *"Further, entry to the building and the suite is restricted to the executor/executrix of the estate...for the purposes of arranging vacant possession."*

A letter from the landlord dated April 5, 2010 was in evidence attesting that the landlord accepted late payment of rent for April, but again reiterated that the funds were being accepted *"for use and occupancy of the subject suite and does not re-instate tenancy"* .

the letter went on to state, *"Use and occupancy is storage of possessions only and not living accommodation, ending on or before April 30, 2010"*

The tenant testified that after their mother's passing on March 29, 2010, the funeral service was scheduled for April 5, 2010 and many relatives and friends were there to attend, some coming from afar for this purpose. The tenant testified that they had arranged for all of the mourners to come back to the rental unit where a reception was planned. Being that the late tenant had lived in the complex for approximately 16 years, a notice was posted in the building inviting other residents to attend. An announcement was also placed in the newspaper advising that there would be a reception held at the apartment following the funeral.

The tenant testified that when all of the mourners returned to the complex for the reception, they found that the landlord had hurried in while they were away attending the funeral and decoded the access key fobs and changed the lock on the rental unit door. The tenants were aghast when they arrived to find that nobody could enter. The tenant stated that this traumatized and caused embarrassment to the family and other survivors. The tenant testified that they were not able to hold the after-funeral reception in the suite and chaos ensued. The tenant stated that the landlord had posted a note on the door with the following curt message:

"THE LOCKS HAVE BEEN CHANGED TO SECURE THE PREMISES AND THE POSSESSIONS OF THE FORMER RESIDENT." ...WE REQUEST THAT THE EXECUTOR/EXECUTRIX OR ADMINISTRATOR OF THE ESTATE...CONTACT THE LANDLORD S..TO DISCUSS ACCESS AND VACANT POSSESSION."

A copy of this note was in evidence. The tenant testified that the landlord certainly had known that they would be attending the services and it was evident that this was a spiteful act purposely aimed at causing the family additional grief. The tenant testified that imposing a "lock-out", created a particular problem for one of the family care-givers from outside Canada who had been staying in the unit, as all of her personal possessions had been locked inside. The tenant testified that, in addition to everything else this individual had gone through caring for her mother during her illness and helping to handle the burial arrangements, she was then forced to endure additional stress in trying to access her baggage in order to make the ferry to catch an international flight overseas.

The tenant testified that on the evening of April 5, 2010, after this incident, the tenant went to speak personally to the landlord. The tenant explained that the decision to lock the tenant out while everyone was occupied with their mother's funeral had decimated the family's plan to hold a post-service reception and inflicted immeasurable suffering on the survivors and other mourners. The tenant pointed out to the landlord that rent for

April was paid. Moreover, two family members were duly authorized executors of the estate with powers of attorney as well. The tenant testified that during the conversation, the landlord acted in a righteous manner without apology and told the tenant that they too had experienced a recent death in their family but they had still managed to carry on. The tenant testified that the landlord then proceeded to criticize the tenant for the delay in responding to the landlord's April 1, 2010 letter that instructed them to contact the landlord as soon as possible. The landlord told the tenant that, as far as the landlord was concerned, the tenancy had ended on March 29, 2010 with the late tenant's death and the landlord expected the tenant to hand over vacant possession by April 30, 2010 as stipulated in the communications.

The tenant testified that, before the landlord would agree to open the door of their suite to give them access, he needed to see the tenant's power of attorney documents. However, the documents in question were locked inside the suite. So the landlord then unlocked the door so the tenants were able to produce the papers verifying that they were named as power of attorney. According to the tenant, the landlord then insisted on seeing the late tenant's will too prior to letting them proceed and after it was surrendered, stood there reading all of the details in the will, while the tenants waited for him to finish. The tenant stated that they were mortified and felt that the landlord was acting like a tyrant. The tenant testified that this unwarranted intrusion amounted to harassment of the family.

The tenant testified that the landlord finally agreed to allow them a brief window of access to the suite so that one of the family members on a tight schedule to leave the country could finally retrieve her baggage. The tenant testified that the landlord issued strict rules stating that the occupants would no longer be permitted to stay in the suite overnight because the tenancy relationship had terminated with the death of the late resident effective March 29, 2010. The tenant testified that the landlord told them that the rental unit could only be used for storing the late tenant's possessions and could not be used to reside in or for any other purpose.

The tenant testified that when the landlord restricted the executor's access to the apartment to weekdays between 8:30 a.m. and 4:30 p.m., the tenant pleaded for permission to access the suite on the weekends as this was the only time that the survivors could do the necessary work. The tenant provided a proposed schedule during which access was required. The tenant stated that the landlord remained adamant that vacant possession of the suite must be turned over to the landlord on April 30, 2010 and this position was not negotiable.

The tenant testified that the landlord's noncompliant actions in restricting access to the suite caused extra expenditures for the tenants including more time being spent and

additional costs for travel, which would not have occurred had the tenant not been restricted from freely accessing and staying in the unit. The tenant submitted receipts for this period totalling \$ 225.00 and testified that the commute for each visit could take up to an hour .

Although the tenant had given written notice to end the tenancy effective May 31, 2010, the tenant testified that they virtually lost possession in April, through forceful eviction and change of locks by the landlord in violation of the Act. The tenant testified that during their limited access, they had to clear out the furniture and belongings, clean the unit and turn over possession to the landlord a month earlier than their effective date. The tenant testified that they were claiming compensation for the equivalent of one month of lost time that they would otherwise have had for distributing and disposal of the late tenant's personal belongings as well as cleaning the suite. The tenant placed a value on this loss of \$677.00. The tenant was also claiming the return of rent already paid to the landlord for the month of April 2010 in the amount of \$677.00 due to being denied use of the suite despite paying rent..

The tenant testified that apparently on April 22, 2010 the landlord had taped a notice on the door advising the tenant that the landlord would be entering the suite on April 23, 2010. The tenant testified that the landlord was well aware that the tenant would not see the notice, given the fact that the landlord had illegally banished the tenant from free access to the unit. Therefore landlord's notice to enter was not served the tenant in sufficient time to meet the 24-hour requirement before the landlord's entry of the suite. The tenant testified that this notice did not state the reason for the entry as required under the Act and the reason for the entry was never disclosed. The tenant's position was that it was not a valid nor compliant landlord's notice to enter the suite.

The tenant testified that during the many years of the tenancy, despite numerous complaints and requests for maintenance made by the tenant, the landlord had failed to properly maintain the unit and permitted the condition of the suite to deteriorate due to normal wear and tear. The tenant felt that the tenancy had been significantly devalued as a result and that a retro-active rent abatement to reflect this fact was justified, although no specific percentage or amount was provided. The tenant also made an allegation that the landlord did not properly follow the Act throughout the tenancy and had frequently acted in a bullying manner towards the tenant and her family.

The tenant gave evidence that the conduct of the landlord, as described above constituted violations of sections 26, 27, 28, 29, 30, 31 and 32 of the Act.

In addition to the monetary claim, the tenant also made a claim for non-pecuniary, or aggravated damages in the amount of \$5,000.00 because of the grief, humiliation,

stress and suffering that the tenants were forced to endure because of the landlord's wilful disregard for the law.

The landlord testified that its decision to end the tenancy as April 30, 2010 was not done for spite, and was done because it had been operating under the belief that a tenancy ends when the tenant has died. The landlord stated that this was also pursued in the interest of saving the estate the \$677.00 rent charges for May 2010.

In regards to changing the locks on April 5, 2010 and imposing restrictions on the use and access of the unit, the landlord testified that this happened because there was no response from the estate or survivors in answer to the landlord's April 1, 2010 letter posted on the door and the other communications in which the landlord asked that the executors of the estate to contact the landlord. The landlord testified that it was necessary to change the locks of the unit on April 5, 2010 to "*protect the tenant's possessions*". The landlord could not explain under what legal authority the landlord felt entitled to do take on this role, but explained that it was following the standard procedure normally done in such circumstances.

In regards to the written request on April 1, 2010 from one of the executors seeking to personally "take over" the tenancy in the capacity of co-tenant, the landlord pointed out that no co-tenancy was ever approved by the landlord and this individual had no right to have the tenancy transferred to his name after the death of the late tenant.

The landlord did not agree with the one-month claim for compensation for wrongful termination of the tenancy. The landlord stated that they had acted in accordance with corporate procedure normally followed by the landlord and they had given the tenant ample notice that the tenant would no longer have any right to remain in possession of the unit during May 2010.

The landlord did not agree with refunding the rent for April 2010 as the unit was still occupied by the late tenant's belongings and was thus not available for re-renting.

The landlord disputed the tenant's claim for a retro-active rent abatement for devalued tenancy due to inadequate maintenance and took the position that basic maintenance and repairs were done in compliance with the Act and the landlord's responsibilities. The landlord submitted photos and evidence that purported to support this fact.

The landlord also did not agree with the tenant's claim for reimbursement for the cost of travel due to the restriction of access to the unit. The landlord stated that the tenants did not have to commute as claimed and even if they did, this was an expense to be expected as part of the role of executor.

In regards to the claim for aggravated damages, the landlord did not feel that any damages could be justified. The landlord testified that everything was done with good intentions and in the best the interest of all concerned.

Analysis: Monetary (Pecuniary) Damages

In section 1 of the Act, the definition of "tenant" includes the estate of a deceased tenant. I find that the Estate, being the tenant, was entitled to all of a tenant's rights under the Act and the agreement.

I find that section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into and section 6 of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement.

In this instance I find the parties had entered into a tenancy agreement on July 1, 1994 and that the tenancy was to continue until legally ended in accordance with the Act.

Section 44 of the Act provides all of the circumstances under which a landlord, or tenant, may end a tenancy and states that, a tenancy ends only if the landlord gives notice to end the tenancy in accordance with:

- section 46, landlord's notice for non-payment of rent;
- section 47, landlord's notice for cause;
- section 48, landlord's notice for end of employment;
- section 49, landlord's notice for landlord's use of property.

Regardless of what a landlord may say or do or what compelling motives and circumstances prevail, a tenancy can only be ended by one party provided it is done in strict compliance with the Act. In this instance I find that the current situation before me did not meet the criteria to satisfy one of the above sections.

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the Respondent in violation of the Act or agreement
3. Verification of the amount to compensate for the claimed loss or damage.
4. Proof section 7(2) of the Act was followed by taking steps to minimize the loss

In this instance, the burden of proof is on the claimant. that being the tenant.

Ending Tenancy

I find that the tenant had given valid written Notice to vacate effective June 30, 2010 which complied with section 45 of the Act. However, the landlord purported to impose an end to the tenancy effective April 30, 2010 unrelated to any provision in the Act.

I find that the April 1, 2010 letter from the landlord had misinformed the tenant that the landlord had a right to take "*vacant possession by the end of April 2010*" and wrongfully stated that the rent could only being considered "*for use and occupancy only*". I find that the letter of April 2, 2010 also incorrectly advised the tenant that the tenancy could be ended despite the tenant 's wishes, by stating that "*entry to the building and the suite is restricted to the executor/executrix of the estate...for the purposes of arranging for vacant possession.*" In the letter dated April 5, 2010 the landlord accepted late payment of rent for April occurring due to a bank error, but once more created a false impression in stating that the funds were being accepted "*for use and occupancy of the subject suite and does not re-instate tenancy*". I find that there is no doubt that the landlord's intention was to force an early termination of the tenancy on April 30, 2010 without due process under the law. Given the above, I find that the landlord did not follow the legislation for legally ending the tenancy and violated section 44 of the Act.

I find that, to regain legal possession against a tenant's wishes, the Act requires that the landlord first give a valid and compliant Notice to End Tenancy under one of the relevant sections of the Act, then proceed to make an application for dispute resolution to successfully obtain an Order of Possession under section 55 of the Act following which, according to Section 57(2) of the Act the landlord would still not be entitled to take actual physical possession of a rental unit occupied by a tenant until the landlord

also obtained a valid Writ of Possession under the Supreme court Rules to be enforced by a qualified bailiff.

I find that *all* of the above steps were supposed to be taken before seizing physical possession and *none* of the legal steps were followed by this landlord. Instead the landlord resorted to merely proclaiming that the tenancy must end and acted without valid authority by preventing its continuance by forcibly taking possession of the unit.

In fact this tenancy would have legally ended and possession turned over to the landlord on May 31, 2010, pursuant to the tenant's valid written notice to end tenancy under section 45 of the Act.

Restrict Facilities and Access

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) *exclusive possession of the rental unit* subject only to the landlord's right to enter the rental unit in accordance with section 29; (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the tenant was deprived of quiet enjoyment and exclusive possession of the rental unit in April 2010 in violation of section 28 of the Act by persistent and unauthorized interference from the landlord.

Section 26(3) of the Act states that, whether or not a tenant has paid the rent in accordance with the tenancy agreement, a landlord must not: (a) seize any personal property of the tenant, or (b) prevent or interfere with the tenant's access to the tenant's personal property. I find that the tenant was denied access to the tenant's personal property in violation of section 26 of the Act.

Section 27 prohibits a landlord from terminating or restricting a service or facility if (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or (b) providing the service or facility is a material term of the tenancy agreement. I find that the landlord contravened section 27 of the Act by denying the tenant the right to stay in the unit and this constituted a blatant violation of a material term of the tenancy.

Section 29 of the Act permits a landlord to enter a rental unit as necessary provided (a) the tenant gives permission at the time or not more than 30 days before the entry; and (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; and(ii) the date and the time of the entry, which

must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. In this instance I find that the landlord had posted a noncompliant Landlord's Notice to Enter on the tenant's door that was missing mandatory data. Moreover, because section 90 of the Act provides that a document posted on the door is deemed to be received on the 3rd day after it is attached I find that the landlord was in contravention of section 29 of the Act by entering without adequate notice.

Section 30 of the Act specifically prohibits a landlord's interference with the tenant's access and the access of the tenant's guests. I find that the tenant and the tenant's guests were wrongfully impeded from free access to and from the suite by the landlord and this was a serious violation of section 30 of the Act.

Section 31 of the Act prohibits a landlord from changing locks or other means that give access to residential property unless: (a) the tenant agrees to the change, and (b) the landlord provides the tenant with new keys or other means of access. I find that by changing the locks on April 5, 2010, the landlord essentially took forceful possession of the unit.

I do not accept the landlord's explanation that this was due to the tenant's failure to respond to the landlord's April 1, 2010 letter. The tenant had no legal obligation under the Act to reveal personal data in regards to the tenant's death nor estate to this landlord and had no obligation to meet to negotiate the ending of the tenancy at the behest of the landlord. I find that the under section 90 of the Act the landlord's letter posted on the tenant's door on April 1, 2010 was deemed to have been served on *April 4, 2010* and the executor dutifully contacted the landlord the next day on April 5, 2010, after being locked out of the suite. I find it inconceivable that the landlord could possibly perceive this as a delay or lack of response on the part of the tenant particularly as the landlord was aware that this family was in upheaval and busy dealing with the funeral at the time. In any case, it is immaterial whether or not the landlord gave the tenant ample time to respond. I find that, even if the tenant completely refused to acknowledge the landlord at all, that would not have justified taking physical possession of the unit and changing the locks against the tenant's will, unless in compliance with sections 44, 55 and 57 of the Act.

I also do not accept the landlord's explanation that changing the locks and impeding access could be defended in the interest of protecting the late tenant's possessions. I find that the Act does not grant any authority to the landlord authorizing it to take charge of the estate of a tenant. The administration of an estate is the responsibility of the executors or Public Trustee under other Provincial legislation.

Given the above, I find that the tenant's claim meets all elements in the test for damages and the tenant is entitled to be reimbursed the rent paid to inhabit the unit

during the month of April 2010 in the amount of \$677.00 under section 67 of the Act. I also find that the tenant is entitled to compensation in the amount of \$677.00 to compensate the loss of much-needed time, opportunity and convenience to settle the late tenant's affairs and estate due to being illegally evicted.

Other Damages

In regards to the tenant's claim that additional costs were incurred for travelling and extra time to deal with the estate cause by the landlord's action, I find that the tenant is entitled to \$250.00 in compensation that represents the cost of travel, time spent and inconvenience.

Section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In regards to the tenant's claim that the tenancy was devalued for a portion of the tenancy by an evident lack of maintenance and repairs, I accept the tenant's evidence that the suite had not been adequately maintained by the landlord pursuant to section 32 of the Act. A landlord is required to make repairs in a timely manner when the tenant reports a problem and to ensure that normal wear and tear is addressed. For example the Residential Tenancy Regulation sets the average useful life of paint and interior finishes at 4 years and the life of carpets or tile at 10 years. Although the landlord gave testimony that the unit was maintained and kept in good repair by the landlord, I find that the landlord's evidence only included one communication from the tenant requesting repairs in 2007, which had a hand-written notation on the bottom, "*completed June 14/07*", presumably made by the landlord and evidence that the flooring in the bathroom and kitchen had been replaced in 2001 and 2002.

Based on the evidence presented, I find that that the suite was in dire need of repainting and minor repairs due to normal wear and tear. Photos showing the vintage finishes and fixtures also revealed rust on base board heaters and stove fan, discoloured walls, peeling paint, worn and fraying carpet and mildew in the bathroom grout. I find that the tenant is entitled to a token retroactive rent abatement of \$100.00 per year for all of the maintenance deficiencies for the final six-years of the 16-year tenancy, amounting to total entitlement in the amount of \$600.00.

The evidence submitted by the landlord also verified that the landlord had collected two \$25.00 “late” charges from the tenant for rent not received on time. I find that while section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent, section 7 (2) of the *Regulation* prohibits the charge of this fee unless the tenancy agreement between the parties *specifically provides for that fee*. Therefore, pursuant to my authority under section 58 (1), I find that these fees were in violation of the Act and I therefore order that the \$50.00 must be refunded to the tenant.

I find that the landlord's denial of the request from one of the executors seeking to personally take over the tenancy under the existing tenancy agreement was warranted. I find that by refusing to change the tenancy agreement, the landlord was properly complying with section 14 of the Act.

In summary, I have found that the tenant has successfully proven that there were a number of serious violations of the Act by the landlord and that this directly resulted in losses by the tenant. As the test for damages has been met, I find that the total amount to which the tenant is entitled for pecuniary damages is \$2,354.00, comprised of \$677.00 abatement in rent for loss of use in April 2010, \$677.00 damages for wrongful termination of tenancy, \$250.00 compensation for the tenant's time and travel, \$600.00 rent abatement for deficient maintenance, \$50.00 for illegal late charges, and the \$100.00 cost of filing under section 72 of the Act..

Nonpecuniary Damages

Awards for pecuniary damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. However, in addition to the above, this instance the tenant also made a claim of \$5,000.00, for aggravated damages based on the stress, hardship, humiliation and inconvenience inflicted by the landlord's multiple violations of the Act and mean-spirited interference with the tenants during their time of grief. Written testimony from several family members who were directly impacted by the landlord's actions was submitted into evidence.

A statement from one of the late tenant's daughters gave a chronological account of her experience over the final months and in particular the day of the funeral and contained the comment:

“This behaviour caused a high amount of stress, anxiety and upset to an already grieving family. To carry out this action at this time was not only unlawful it was unconscionable. It was shocking and held an amazing lack of compassion. I am

still shaken from this event as that time should have been a time for sharing memories and supporting each other, it turned into a battle to have access to the apartment.”

The above sentiments were echoed by another daughter who categorized the landlord's action in changing the locks as:

“an incredibly cruel and vicious action given the emotional stress and pain that we were all coping with at this very sad time for our family. We had legal occupancy until the end of the month and this was an illegal action on the part of the Property Manager...I feel there was absolutely no compassion or understanding offered my family at a time of great sadness...”

The late tenant's granddaughter wrote:,

“I would like to comment on the events of April 5, 2010. Me and my family had just organized and attended my grandmothers memorial service, and were going to her apartment to share a meal together since most of us had come from out of town. We arrived at the building only to find that her landlords had waited for us to leave the building for the service so they could lock us out. They changed the locks on the door already had disabled the front door key fobs and refused to let us in, upon much debate and argument. This made me very frustrated, especially on such an already hard and emotional day.”

The late tenant's son gave testimony at the hearing describing similar feelings of severe emotional trauma and lasting symptoms of anger and frustration. Tenant stated that he and his siblings were in a weak and vulnerable state being preoccupied with their mother's illness and death and the landlord took unfair advantage by doing everything possible to bully and mistreat the tenants to make things harder on them all. The late tenant's son believed that the landlord purposely set out to ruin the memorial reception at the suite, which it succeeded in doing. No apology was ever given. While the tenant's son acknowledged that nothing could be done to rectify what happened nor to erase the bad memories, the tenant felt that aggravated damages were fully justified in the circumstances.

Under the Act, aggravated damages may be awarded in addition to other damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses to reflect compensation for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress and other intangible losses, which are considered to be "non-pecuniary" in nature and are designed to compensate the person wronged, for

aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour.

I find that the non-pecuniary or aggravated damages must be measured by the wronged person's suffering and the following factors were considered:

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen at the time they entered into the contract and would know that the breach complained of would result in the distress claimed.
- The violation must be sufficiently significant in depth, or duration, or both, that would represent a significant influence on the wronged person's life and is such that the person wronged cannot be fully compensated by an award for pecuniary losses.

I find that the landlord wantonly inflicted additional grief and stress at a time when the tenant was particularly vulnerable, seemingly going to great lengths to do so, even when it entailed contravening the law. I find that the landlord's noncompliant and callous treatment of this long-term tenancy impacted a number of people in an unforgettable way and caused irreparable damage by destroying a memorial service that can never be redone. I find that these egregious actions did impose foreseeable and significant stress, humiliation and inconvenience onto the tenant.

Based on the evidence, I find that the tenants have succeeded in satisfying all of the above criteria to justify the awarding of aggravated damages in the amount of \$5,000.00.

Given the above, I find that the tenant has established total monetary entitlement of \$7,354.00, comprised of \$2,354.00 for pecuniary damages and cost of the application and \$5,000.00 in aggravated, or non-pecuniary, damages.

Conclusion

I hereby grant a monetary order in favour of the tenant for \$7,354.00 . This order must be served on the Respondent and if unpaid may be filed in the Provincial Court (Small Claims) and enforced 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: October 2010.

Dispute Resolution Officer