



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MNDC

### **Introduction**

This hearing was convened in response to an Application for Dispute Resolution being filed by the tenant. In that application the tenant seeks a monetary order for compensation for damage or loss in the sum of \$3,077.35.

Both parties appeared at the hearing and gave evidence under oath.

### **Issues(s) to be Decided**

Is the tenant entitled to the compensation claimed?

### **Background and Evidence**

The tenant testified that this tenancy began on September 15, 2009. Rent was fixed at \$800.00 per month and the tenant paid a security deposit of \$400.00 at the start of the tenancy. The tenant testified that the rental unit consisted of a private bedroom and bathroom and a room with a private area for the tenant to cook his meals in a microwave supplied by the landlord. The tenant says he also set up a propane stove which he uses safely in his work at the restaurant at a restaurant. The tenant says he also set up a camp stove however he later realized the camp stove was not appropriate and he no longer used it. There was a fridge in the garage in which the tenant could store foods that required refrigeration.

The landlord says she never had a tenancy agreement with this tenant and there is nothing in writing. The landlord says she is not familiar with the Residential Tenancy Act because she is not a landlord and this tenant is not a tenant. The landlord submits that because of this the *Residential Tenancy Act* has no jurisdiction to decide this matter. The landlord says this is so because she lives in the building and she is the owner and the tenant does not have his own kitchen. The landlord says the tenant told her he was a chef and he would eat at the restaurant. A microwave was provided by the landlord to allow the tenant to heat small amounts of food and the landlord testified that she had a fridge in the garage which the tenant could use for the food items he needed to keep cold. The landlord testified that the rental unit consisted of a bedroom, a bathroom and a table with the microwave as previously described. The landlord testified that the tenant took over a crawlspace area without her permission and in that space he housed a propane stove and camp stove which he used to cook. The landlord testified that this caused an extreme fire hazard.

The tenant testified that he received a typewritten note dated December 15, 2010 from the landlord telling him to vacate the rental property immediately. The tenant knew that this was not a proper notice and did not vacate. On December 21, 2010 the tenant found a 1 month Notice to End Tenancy for Cause slipped under his door. That Notice sought to end the tenancy January 21, 2010. The tenant testified that he filed an Application to Dispute the Notice and he served the landlord with that Application by way of registered mail. The matter was set for hearing on February 25, 2010. However, on January 15, 2010 the tenant says he received a phone call on his cellular phone from DW, one of the landlord's witnesses. The tenant testified that DW advised him that the locks had been changed on his rental unit and he could no longer gain access. The tenant says he spent the first night at a hotel and then moved to a friend's home. The tenant says a week after the locks were changed the tenant contacted the landlord to arrange to pick up his belongings and he was allowed to retrieve one bag of clothing and a bike. The tenant says that the rest of his goods were missing.

The landlord submitted photographs which she says show the condition of the rental unit during the tenancy. The landlord says the tenant removed all of the belongings shown in the photographs when he was evicted. In her written submission the landlord says the RCMP attend the residence after the tenant vacated and told the landlord to pack up the rest of the tenant's belongings as they appeared to be junk and call him to set up a time for him to return to the garage and collect his junk. The landlord testified that the RCMP told her to call him three times after which time she could he vacated and advised the landlord to pack up the rest of the tenant's belonging as they appeared to be junk. The landlord said his cooking equipment, sports equipment, skies, etc. good TV, computers guitar and whatever else was already gone. In her written submissions the landlord states:

He did not show at the agreed upon time. We called again he did not show. We called again finally he did return five days later and complained his things were missing. He stole from us, damaged our property, threatened me personally caused 3,000 damage to the room, bathroom, used a propane campstove in our storage room as photographs. Refused to leave after 2 verbal demands 1 writetn letter 1 form letter. We returned his damage deposit inspite of the damages just to get rid of him. The RCMP attended my home three or four times upon his calls. The found nothing amiss. They did however express concern for the safety of my person and home.

*(reproduced as written)*

At the hearing of the matter the landlord testified that the RCMP told her to call the tenant three times and, if the tenant did not respond or come to get his things, to take his things to the dump which she did.

The landlord testified that she is aware there was a "meeting" about this matter previously with the Residential Tenancy Branch but she did not attend. The landlord responded that if the tenant served her by registered mail with a notice of the meeting she did not receive any registered mail because she was away and did not pick up her mail. The landlord said that she did receive a "letter" from the Residential Tenancy

Branch that said that she returned the security deposit and did everything right and the tenant had no right to come after her for anything more.

The tenant testified that the reason the RCMP were called 3 or 4 times during his tenancy is because the landlord kept shutting off his heat and light in her attempts to get him out of the suite. The rental property is located in Whistler, the tenant believes the landlord wished to get him out so she could re-rent it for the Olympics and make more money. The tenant says his application was heard on February 25, 2010. In that application the tenant sought more time to make his application and, if more time was granted, he sought to set aside the landlord's Notice to End Tenancy. In the decision rendered that day the Dispute Resolution Officer found that the tenant had failed to establish exceptional circumstances which prevented him from submitting his Application for Dispute Resolution to dispute the Notice to End Tenancy in time. The tenant's application for more time was therefore dismissed. The landlord did not attend the hearing to request an Order of Possession. In his decision the Dispute Resolution Officer noted:

Despite the failure of the landlord to obtain an Order of Possession in relation to the Notice to End Tenancy for Cause, issued December 21, 2009, and therefore have no legally authority to change the locks on the rental unit, the tenant no longer has access to the rental unit. As a result and as I have dismissed the tenant's application for more time, I dismissed the tenant's application to cancel the notice to end tenancy.

The tenant is at liberty, however, to file an application for compensation for damages or losses under the Act resulting from the landlord's actions.

The tenant submits that the landlord illegally evicted him as she never obtained or served him with an Order of Possession. The tenant says the landlord's actions were wilful because she wished to re-rent the premises to someone else who would pay more for the premises at Whistler during the Olympics. The tenant says he incurred the following losses:

1 set of bed sheets and 1 white down filled duvet	\$200.00
1 set of contacts	146.00
1 set of eye glasses	200.00
2 shirts	50.00
2 pants	150.00
Work boots `	135.00
1 putter Golf club	200.00
1 Training Aid Golf	45.00
1 TV set	100.00
Cash	80.00
Hotel bill for the first night when Tenant was locked out	171.35
<b>Total</b>	<b>\$1477.35</b>

In his written submission the tenant also seeks \$1,600.00 representing 2 month's rent for the "abuse I received". On that point the tenant submits that contrary to the agreement during the course of the tenancy the cablevision was not hooked up by the landlord, the internet was disconnected, the lights in the bathroom were never fixed, there was mould in the ceiling of the bathroom and, the tenant seeks a portion of the money the landlord earned by "...throwing me out of the house so that she could make more money renting out for the Olympics".

The landlord brought forward 2 witnesses. The first witness CB testified that she had a look under the crawlspace and saw the pots and pans the tenant was cooking with. CB testified that the tenant had removed his belongings and that the landlord lived in fear and apprehension of the tenant.

The landlord's second witness DW testified that the police said "...we had so-many days and then we could dispose of his stuff". DW testified that he cannot recall when the tenant came to pick up his things. DW testified that he didn't think he was present when the tenant came to pick up his things. Both the landlord and the tenant interjected to remind DW that he was present. DW then stated "yes I was there" and responded that the tenant picked up a bag and a bike. DW testified that he did not know what happened to the tenant's toiletries, TV, blankets, etc.

## **Analysis**

The landlord says she does not know anything about the *Residential Tenancy Act* because she did not consider this to be a tenancy and does not consider herself a tenant. The landlord says she evicted the tenant because he was creating a hazard on her property with his cooking stoves. The landlord testified that she did “everything right” as decided in a previous hearing.

The *Residential Tenancy Act* defines a tenancy as a tenant's right to possession of a rental unit under a tenancy agreement. The Act sets out that a tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that the tenant had a right to possess the rental unit for which he paid the landlord monthly rent of \$800.00 and for which he paid a security deposit of \$400.00, the maximum allowed under the Act.

The landlord argues that this rental unit does not come within the Act as the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. The landlord testified that the tenant did not have his own kitchen however the evidence shows he did have his own microwave and fridge and his own bathroom. Further, there has been no evidence to show (a) that the landlord is also the owner of the property, but even if I were to accept this to be true, the landlord has supplied insufficient evidence to show that she and the tenant shared the kitchen and bathroom facilities. I therefore find that this is a tenancy comes within the jurisdiction of the Act and I, as such I have jurisdiction to decide this matter.

Even though the landlord believes this tenancy does not come within the jurisdiction of the Act she has submitted that she was exonerated at a previous hearing respecting

this tenant and this rental unit. The landlord testified that in a previous decision she was found to have done “everything right”. However, a review of the decisions shows otherwise. In fact the Dispute Resolution Officer noted in his decision quite specifically that:

Despite the failure of the landlord to obtain an Order of Possession in relation to the Notice to End Tenancy for Cause, issued December 21, 2009, and therefore have no legally authority to change the locks on the rental unit, the tenant no longer has access to the rental unit. As a result and as I have dismissed the tenant’s application for more time, I dismissed the tenant’s application to cancel the notice to end tenancy.

I find that the landlord’s testimony that she was exonerated in a previous decision is contradicted by what the Decision actually says. Contrary to the landlord’s testimony, it does not say the landlord did “everything right”. In fact it explicitly noted that the tenant had been denied access to the rental unit even though the landlord had no legal authority to change the locks as she did not have an Order of Possession.

I find that the evidence of both parties shows that the landlord did change the locks, she did deny the tenant access to his rental unit. The only difference between the two versions of events is that the tenant says the landlord had no right to do these things and the landlord maintains she did. To this end the landlord is willing to attempt to mislead the Dispute Resolution Officer by testifying that she was exonerated in another Decision. I find that this brings the landlord’s entire credibility into question. Further and in contrast to the landlord’s lack of veracity, I find the tenant has been straightforward and honest. For instance he admits that he made a mistake bringing a cooking device into the rental unit.

As to the evidence of the landlord’s witnesses, the evidence of CB was largely irrelevant as it showed that he tenant had been using cooking appliances which event was already admitted. Further that the tenant’s rental unit was not clean. Neither of which were relevant to this matter.

The evidence of DW was less than helpful in most respects because he could not remember what happened. However, he did remember that the tenant walked away with only a bag and a bike and this testimony supports the tenant's own version of events that he left much of his goods behind.

Overall I prefer and accept the evidence of the tenant and I find his claim for the following to be reasonable:

1 set of bed sheets and 1 white down filled duvet	\$200.00
1 set of contacts	146.00
1 set of eye glasses	200.00
2 shirts	50.00
2 pants	150.00
Work boots `	135.00
1 putter Golf club	200.00
1 Training Aid Golf	45.00
1 TV set	100.00
Cash	80.00
Total	\$1306.00

I find that the evidence shows that the tenant was locked out of his home improperly and without regard to the law. I find it more than reasonable that he is only seeking the cost of one night in a hotel at the rate of \$171.35, this while keeping in mind the landlord's testimony regarding how expensive accommodation at Whistler can be.

Finally, with respect to the tenant's claim for \$1,600.00 for (in the words of the tenant) "abuse I received" for "...throwing me out of the house so that she could make more money renting out for the Olympics". The Act does allow a Dispute Resolution Officer to award aggravated damages in very serious situations. Such damages take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behavior. In this case I find that the evidence shows that the landlord locked this tenant out of his home, seized his goods and then disposed of them without regard for the tenant or the law. Further, I find it is reasonable and probable that her motivation was, as the tenant asserts, to rid herself of this tenant so she could re-rent



the unit to guests for the Olympics which were about to commence in a few weeks and for which she could charge a great deal more money.

As a result of the landlord's conduct the tenant lost his home without any notice at a time in Whistler when it would be difficult to find new accommodation. He also lost his belongings which were disposed of with willful disregard by the landlord. I find therefore that it is reasonable and probable that he suffered humiliation and stress as a result of the landlord's conduct and I find he is entitled to aggravated damages. In addition to the sum awarded above, I will also award the sum of \$800.00 representing one month's rent as aggravated damages in this matter.

### **Conclusion**

The landlord is provided with a formal copy of an order for the total monetary award in the sum of \$2,106.00. Should the landlord(s) fail to comply with this Order and pay this sum to the tenant forthwith, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.