



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, MNDC, RPP

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for compensation for damage or loss under the Act or tenancy agreement and for the return of personal property. At the beginning of the hearing, the Tenant admitted that the tenancy ended on December 31, 2010 and therefore she abandoned her application to cancel the 10 Day Notice.

At the beginning of the hearing the Tenant also claimed that she received a copy of the Landlord's evidence package late. The Landlord said he sent a copy of the evidence package by registered mail to a forwarding address provided by the Tenant but later discovered that it was an incorrect address and as a result, he served the Tenant's agent in person on January 10, 2010. In the circumstances, I find that the Landlord's evidence is admissible.

### Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of personal property?

### Background and Evidence

This tenancy started on August 15, 2010 and ended on December 30, 2010 when the Tenant moved out. Rent was \$600.00 which included cable.

On October 31, 2010, an agent for the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. The Tenant's application to cancel that Notice was heard on December 2, 2010 and dismissed on the grounds that she had not applied within the time limits required under the Act and the Landlord was granted an Order of Possession. The Tenant applied for a correction of that Decision which was granted on December 13, 2010 with the result, that the Order of Possession was cancelled. The Tenant claims that she never received a copy of the Corrected Decision dated December 13, 2010 advising her that the Order of Possession had been cancelled.

The Tenant claimed that after she received the One Month Notice on October 31, 2010, the Landlord cut off her cable and wireless internet service. The Tenant also claims that she was advised by Shaw cable that a landlord was not permitted to share cable services with a tenant and as a result, effective November 21, 2010, the Tenant had cable and internet service set up and she sought to recover the cost of \$82.72 for November and December 2010. The Landlord denied that he ever supplied the Tenant with internet service and said she already had a different service provider (for her e-mail account) prior to the tenancy. The Landlord also denied terminating the Tenant's cable and argued that had he done so, it would have been reflected in the monthly statements.

The Tenant also claimed that after October 31, 2010, her relationship with the Landlord deteriorated and the Landlord began harassing her. In particular, the Tenant claimed that the Landlord would no longer allow her ex-spouse to park on the rental property even though she had to use a walker or wheel chair (as she was recovering from hip surgery). The Tenant said the Landlord also gave her husband a written warning that if he parked in the lane behind the rental property, he would be towed. The Tenant further claimed that the Landlord gave her a 10 Day Notice to End Tenancy for Unpaid rent and a 2 Month Notice to End Tenancy for Landlord's Use of Property on December 20, 2010. The Tenant said the Landlord walked into her rental unit without permission on November 25, 2010 to serve her with a copy of a CD recording.

The Tenant said she also tried to give the Landlord a rent cheque for December 2010 rent on November 25, 2010 but he would not accept it. The Tenant also said the Landlord kept her mail and noted that he provided in his evidence package a copy of a document that she gave to his spouse in a sealed envelope and asked her to mail. The Tenant said the Landlord would get very upset if she served anything on him so she had to ask the police for assistance or get a cab driver to serve things. The Tenant claimed that she had to move out due to the Landlord's intimidation. The Tenant's agent claimed that when the Landlord served him with an evidence package on January 8, 2011 at his workplace, the Landlord threatened to give the documents to his employer if the Tenant did not pay him 2 months' rent.

The Landlord claimed that he had left written notices on the Tenant's spouse's vehicle on two previous occasions asking him not to park in the alley. The Landlord said he was concerned about the Tenant's spouse hitting 2 gas meters close by. Consequently, the Landlord said it was only after the Tenant's husband ignored his requests that the Landlord threatened to have him towed. The Tenant's spouse denied receiving more than one written notice about the parking. The Landlord admitted that the Tenant asked a cab driver to serve him with a post-dated cheque for December rent on November 25, 2010. The Landlord also admitted that he did not accept the cheque because he claimed the Tenant wanted him to sign an acknowledgement that he had

received cash. The Landlord said he had advised the Tenant to pay cash on December 1, 2010 because he had had problems with her paying by cheque the previous 2 months and was concerned she might put a stop payment on it. The Landlord said he knew the cab driver was at the rental unit door returning the cheque to the Tenant so he walked down to her unit, saw the cab driver at the door and handed a CD to the cab driver to give to the Tenant. The Landlord denied entering the rental unit. The Landlord claimed that every time he tried to serve something on the Tenant she would contact the RCMP and allege that he was banging on her door.

The Landlord denied keeping the Tenant's mail. The Landlord's spouse (M.G.) claimed that the Tenant asked her to deliver a completed form to the agency in question because it had to be there that day. The Landlord's spouse also claimed that the Tenant asked her to retain a copy for her because it dealt with her former spouse who visited her from time to time and she was concerned that he might find it. The Landlord also denied threatening the Tenant's spouse on January 8, 2011. The Landlord said he delivered the documents to the Tenant's spouse because he did not have a correct address for service for the Tenant and claimed that he gave the Tenant's spouse the documents and left.

The Tenant also claimed that the Landlord borrowed some DVDs from her but has failed or refused to return them as well as her mail. The Landlord also claimed that the Tenant cut off all communication with him after he served her with the One Month Notice so he contacted the Tenant to ask her what she wanted him to do with her mail. The Landlord said the Tenant hung up on him. The Landlord also said it was not until December 27, 2010 that the Tenant gave him a new mailing address and he redirected her mail to that address. The Landlord said he later discovered that the address provided by the Tenant was an incorrect address which the Tenant admitted. The Landlord also denied keeping DVDs belonging to the Tenant. The Landlord said that when the Tenant moved in she did not have a DVD player so he bought one for her unit. Following her surgery, the Landlord's spouse said she provided DVDs to the Tenant because she claimed that her ex-spouse had kept all of hers.

## Analysis

Section 27(2) of the Act says (in part) that a landlord must not terminate or restrict a service or facility unless the Landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy resulting from the termination or restriction of the service or facility.

On this issue, the Tenant has the burden of proof and must show that the Landlord terminated cable and internet after October 31, 2010 and that the Landlord was

responsible for compensating her for internet services although they were not included in the rent. The Tenant said she was advised by an employee of Shaw Cable that a Landlord was not permitted to share cable with a Tenant. The Landlord denied terminating the Tenant's cable and argued that the one bedroom suite was in a residence and that a separate connection was not required. The Landlord also argued that a certain number of cable outlets was permitted and this did not change following October 31, 2010 as the Tenant claimed. The Landlord denied that the Tenant was provided internet services and claimed that her e-mail account was not with Shaw cable.

I find that cable was included in the Tenant's rent. I also find that the Tenant's corroborating evidence that she said she obtained from a Shaw employee is hearsay and unreliable. Given the contradictory evidence of the Landlord and Tenant on this issue and in the absence of any reliable corroborating evidence to resolve the contradiction, I find that there is insufficient evidence to conclude that the Landlord terminated the Tenant's cable service. I also find that internet service was not included in the Tenant's rent and there is insufficient evidence that there was a verbal agreement that the Landlord would provide it. Consequently, the Tenant's application for compensation for cable and internet services is dismissed without leave to reapply.

Section 28 of the Act says that "a tenant is entitled to quiet enjoyment including, but not limited to the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the Landlord's right to enter in accordance with s. 29 of the Act and use of common areas for reasonable and lawful purposes, free from significant interference."

The Tenant also has the burden of proof on this issue and must show that the Landlord breached her right to quiet enjoyment by harassing her. RTB Policy Guideline #6 says at p. 1 that a tenant must usually show "substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the rental unit unfit for occupancy" to make out a breach of quiet enjoyment. Page 2 lists some examples of conduct that could amount to interference such as persecution and intimidation, entering a rental unit frequently and without permission and so forth.

The Tenant argued that following October 31, 2010, the Landlord restricted parking, terminated services, served her with notices purporting to end the tenancy, refused to accept her rent cheque for December, intercepted her mail, threatened her ex-spouse and generally was intimidating. Consequently, the Tenant argued she felt she had to move out. The Landlord disputed all of these matters.

Where the evidence of the Parties differs on many of these points, I prefer the evidence of the Landlord as I did not find the Tenant's explanation of many of them to be

reasonable or internally consistent. For example, the Tenant claimed that she moved out because she was unaware that the Order of Possession granted on December 2, 2010 had been cancelled. The Tenant admitted that she applied for a correction of the Decision granting the Order of Possession but failed to follow up to find out the outcome of that application which was issued on December 13, 2010. I find this explanation unreasonable given that there would be no reason for the Tenant to seek to have the Order of Possession cancelled unless she intended to stay. Consequently, it makes no sense that the Tenant would not try to find out the outcome of her application before taking steps to vacate. The Landlord (who lives in the same property) said he received a copy of the Correction Decision and that was the reason he served the Tenant with 2 further Notices on December 20, 2010. The Landlord argued that the reason the Tenant moved out on December 30, 2010 was to comply with the 10 Day Notice because she had not paid rent for that month. I also accept the Landlord's evidence that the only reason he did not accept Tenant's post-dated rent cheque on November 25, 2010 was because he had had difficulties cashing a cheque she had given him for November 2010 rent and had concerns that the Tenant might put a stop payment on the cheque before December 1, 2010 and that was why he asked her to pay in cash on December 1, 2010.

I also accept the evidence of the Landlord's spouse that the Tenant relied on her assistance to make a copy of and to deliver a signed form on her behalf. While the Landlord apparently did not have the Tenant's authorization to use the form as evidence at this hearing, I find that the reason the Landlord's spouse had a copy of it was because the Tenant asked her to keep a copy. Furthermore, although the Tenant argued that the Landlord would not permit her spouse to park on the rental property, she admitted that parking was not included in her rent. I also find the Landlord's request that the Tenant's spouse not park near gas meters for safety reasons was a reasonable request and not undertaken to harass the Tenant.

In essence, it is clear that the (once amicable) relationship between the Parties deteriorated after the Tenant was served with the One Month Notice on October 31, 2010 however, I find that there is insufficient evidence that the Landlord engaged in a course of harassing behaviour as the Tenant suggests. Indeed the Landlord and his spouse also gave evidence that they became increasingly frustrated that each time they attempted to deal with the Tenant, she would contact the RCMP on them. Consequently, I find that there is insufficient evidence to support this part of the Tenant's claim and it is dismissed without leave to reapply.

Given the contradictory evidence of the Parties regarding the Tenant's claim for the return of DVDs and her mail, I also find that there is insufficient evidence to support this part of her application and it is dismissed without leave to reapply.



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## Conclusion

The Tenant's application is dismissed without leave to reapply. 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: January 13, 2011.

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Residential Tenancy Branch