



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on November 9, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there damage or loss to the Tenant under the Act, regulations or tenancy agreement and if so how much?
2. Is the Tenant entitled to compensation and if so how much?

### Background and Evidence

This tenancy started on or about September, 2004 as a verbal agreement to end when the Tenant’s son graduated from high school at the end of June 2010, rent was paid on month to month basis. The Landlord said although this was the verbal rental agreement he viewed the tenancy as a month to month tenancy. Rent was \$ 1,000.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant said no security deposit was paid. The Tenancy ended when the Tenant moved out on June 3, 2010.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause. The Landlord was not sure of the date that he served it to the Tenant. The Tenant said the Landlord served her the 1 Month Notice to End Tenancy for Cause on March 31, 2010, which was the same day the Landlord told her the rental unit was sold and that he offered her a mutual agreement to end tenancy to sign. The Tenant said she would not sign the mutual agreement to end tenancy as she believed the Landlord ending the tenancy to sell the property. The dispute of the Notice to End Tenancy for Cause was heard on May 20, 2010 by the Residential Tenancy Branch. The Tenant

said she did not participate in the call because she phoned in too early and therefore was not connected into the conference call. The decision from that hearing found in favour of the Landlord and the Notice to End Tenancy was upheld. The Tenant said she applied for a review of the decision and that review also found in favour of the Landlord and the decision remained in place.

The effective vacancy date on the Order of possession issued to the Landlord was May 31, 2010. The Tenant said that she did not receive the decision nor did the Landlord server her the Order of Possession until June 2, 2010 along with the Writ of Possession issued by the Supreme Court of British Columbia authorizing a Sheriff or Bailiff to obtain possession of the rental unit for the Landlord. The Landlord was not sure of the dates, so he did not know when he served the Order of Possession. The Landlord did say that he talked to a Bailiff company about the situation, but he did not hire them due to the costs. The Landlord could not remember the name of the Bailiff company.

The Tenant said she is applying for aggravated damages as a result of how the Landlord treated her and because she believed the eviction was done in an illegal manner. The Tenant said the Landlord harassed her prior to the sale of the property by showing the property without giving her proper written notice for the Landlord to entry the unit. She said the Landlord's agent also harassed by phone at her work in the effort to do showings to potential buyers. The Tenant said there were no more showings after March 31, 2010 as the property was sold. The Landlord said he was not sure of the dates when the showing of the property ended. The Landlord also said he did not remember when the Offer to Purchase was made and when he accepted it. The Landlord continued to say that he had a lot of documents and he could not find the information.

The Tenant continued to say the Landlord did not serve her the Order of Possession until June 2, 2010 which was after the effective vacancy date of May 31, 2010 and he demanded that she be out of the rental unit immediately she and her family suffered significant mental stress. In addition the Tenant said the Landlord turned off the electricity and changed the door locks while she was still in the rental unit. She said that the actions of the Landlord have resulted in her making the following monetary claim against him.

1. Extra rent for the new rental unit (12 X \$300.00)	\$ 3,600.00
2. Replacement of food spoiled when the electricity was turned off	\$ 400.00
3. Her son miss his college placement exam June 5, 2010	\$ 90.06
4. The wages she lost due to the eviction (15 hours X \$17,70)	\$ 265.00
5. Cost of stress medication	\$ 11.78
6. Filing Fee for this proceeding	\$ 100.00
7. Aggravated Damages due to wrongful eviction and harassment	<u>\$20,533.16</u>
TOTAL CLAIM	<u>\$25,000.00</u>

To support the Tenant's claim she called three witnesses to give testimony. The witnesses were affirmed and gave the following testimony.

Witness V.G. said she saw and heard an argument on June 3, 2010 between the Tenant and the Landlord and another man with the Landlord at the rental unit. She said the Landlord said "let us in" and the Tenant said "leave me alone". The Witness continued to say that she was concerned for the Tenant's safety and she was going to call the Police, but before she called the Police arrived on the scene.

The Landlord did not question the witness, but he said he did not harass the Tenant.

Witness R.C. said he was the brother of the Tenant and lived in the unit for part of the time with the Tenant. He said the Landlord and the Landlord's agent came to the unit a number of times to show unit and to take pictures of the unit without giving proper written notice to enter the rental unit. He said the Landlord and the Landlord's agent were aggressive towards him and the Tenant. He continued to say the Landlord gave the Tenant the Order of Possession and the Writ of Possession on June 2, and the Landlord ordered them out of the rental unit immediately. He said the Landlord did not agree to 12 or 24 hours to move out and the Landlord said he wanted them out now.

The Landlord did not question the witness.

The Tenant asked the Witness how many times she had called him for help dealing the Landlord. Witness said approximately 10 times.

The Tenant asked the witness how many times the Police were called due to the Landlord's actions. The Witness said 3 times.

Witness T.M. said she was a witness to the verbal agreement between the Landlord and the Tenant to end the tenancy after the Tenant's son graduated at the end of June, 2010. She also said she witnesses that the power was turned off when she was at the

house on June 3, 2010. The Witness continued to say that she saw the Tenant throughout this time period as they worked together and she believed the Tenant was very stressed due to the harassment of the Landlord.

The Landlord asked the Witness T. M. If she was aware that the Tenant had rented another rental unit prior to leaving the Landlord's unit.

Witness T.M. said she was aware the Tenant intended to find a rental unit, but she was unaware if she had found one prior to the eviction.

The Landlord agreed he had verbally agreed to end the tenancy after the Tenant's son graduated at the end of June, 2010. He said that he had control of the possession date of the sale agreement on the house and he did not know why he chose June 1, 2010 as the closing date for the sale. He said he could not remember and he could not find the offer to purchase in his documents.

The Tenant continued to say that she knows the house was sold March 31, 2010, which was before or close to the day the Landlord gave her the 1 Month Notice to End Tenancy. She said she believes he gave her the 1 Month Notice to End Tenancy because the Landlord did not want to give her until the end of June, 2010 and a free month of rent that is required under the Notice to End Tenancy for Landlord's Use of the Property. The Tenant continued to say the Landlord did not hire a bailiff to enforce the eviction and instead he and his agent took it upon themselves to remove her and her family from the rental unit. The Tenant said this is illegal.

The Landlord said in closing that he acted in good faith and he followed the Act and regulations in his actions to evict the Tenant. He continued to say the Tenant has caused these issues to cost him money with the sale of the property. The Landlord said he does not believe he owes the Tenant any of her monetary claims.

### Analysis

In order for a party in a residential tenancy dispute to establish damage or a loss that party must prove the damage or loss exists, that the loss solely happened because of the actions or neglect of the respondent in violation of the Act or agreement and that the claimant proves they tried to minimize their damage or loss pursuant to section 7(2) of the Act.

Section 7(2) says a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenant has provided testimony describing her claims, but the Tenant has not provided written evidence proving the amount of the claim or showing grounds that the claims are solely the result of the Landlord's action. She says the new rental unit cost \$300.00 a month more, but there is no evidence establishing this was the only rental unit available and that there was no rental units available at \$1,000.00 per month. As well there was no inventory or price estimates or receipts showing the cost of food that was spoiled. The Tenant said her son choose not to write the college exam on June 5, 2010, which does not establish grounds that the Landlord solely prevented the Tenant's son from writing the exam. As well, there is no written or corroborating evidence to support the cost of the work time missed or if the tenant actually missed the 2 days of work. The prescription costs as well are not supported by a doctor's note so the Tenant has not established proof that the cost of the drugs were a result of the Landlord's actions and it was the sole result of his actions that the prescription was purchased.

The Tenant said the balance of the Tenant's claim is for aggravated damages in the amount of \$20,533.16. The Tenant said she put this amount in as she knew the maximum amount of claim is \$25,000.00 and she didn't know what she could get so she put in the maximum. The Tenant has not established the details of how the claim was established and the details of what is included in the claim.

In addition the Tenant is responsible to show that she made efforts to minimize the damage or loss that she is claiming. The Tenant did not give any testimony showing she tried to minimize her costs. For these reasons I find that the tenant has not established grounds that have met the burden of proofing her claims.

The testimony from Landlord, the Tenant and the witness indicate that there are grounds to establish that this was a tenancy with an agreement to end it when the Tenant's son graduated at the end of June, 2010. As well, I accept the Tenant's testimony that the Landlord terminated services or a material term of the tenancy by turning off the power and changing the locks on the door before the Tenant had vacated the property. In addition from the Landlord's testimony he did not hire a Bailiff to enforce the Writ of Possession as indicated on the Writ of Possession, but he and his agent took actions to enforce the order themselves.

Section 27 (1) says a landlord must not terminate or restrict services or facility if the service is essential to the living accommodation or is a material term of the tenancy agreement.

Section 57 says if a tenant is an overholding tenant the landlord must not take possession of the rental unit unless the landlord has a writ of possession. In this case the landlord had a writ of possession and that writ said the Sheriff was ordered to enforce the writ and deliver vacant possession to the landlord.

Policy guideline #16 says an arbitrator may award aggravated damages for intangible losses for physical inconvenience, discomfort or mental distress as well as other reasons. I find the Landlord did not act in good faith at the end of this tenancy. The Tenant and the Witnesses established grounds that the Landlord did not comply with the Act in regards to proper notice to enter the unit. The Landlord did not comply with the Act by terminating electricity and changing the locks on the doors of the rental unit before it was vacated. The Landlord and the Landlord's agent harassed the Tenant and her family during the eviction and when the tenant was vacating the rental unit. It should be noted as well that the Tenant was aware of the eviction and therefore the Tenant had a responsibility to prepare for the move out of the rental unit. Consequently I find in part for the Tenant and I award the Tenant \$1,500.00 as full compensation for her claims against the Landlord.

As the Tenant has been partially successful in this matter I award the recovery of the filing fee of \$50.00 to the Tenant from the Landlord.

### Conclusion

I find that the tenant is entitled to monetary compensation pursuant section 67 in the amount of **\$1,550.00**. This order must be served on the landlord and 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*.

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Residential Tenancy Branch