



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC RPP FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an Order to have his personal property returned, and to recover the cost of the filing fee from the landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail November 18, 2010. Mail receipt numbers were provided in the Tenant's evidence. The Landlord is deemed to be served the hearing documents on November 23, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*. I find the Landlord was sufficiently served notice of today's hearing, in accordance with section 89 of the *Act*.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf the Landlord, despite him being sufficiently served notice of today's teleconference hearing.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Does the Landlord have the Tenant's personal property in his possession, in breach of the *Act*?

Background and Evidence

The Tenant testified he had a verbal month to month tenancy agreement effective approximately November 1, 2005. Rent was initially payable on the first of each month in the amount of \$400.00; however the Landlord raised the rent to \$500.00 as of June 1, 2010. The Tenant was required to pay for cable for the entire house. The Tenant occupied the rental suite in the basement/main floor area while the Landlord occupied the upper floor of the house. The Tenant could not recall if a security deposit had been paid.

The Tenant stated that problems began sometime near the end of May beginning of June 2010 when the Landlord approached him and said he wanted the Tenant out. When the Tenant refused to move out, telling the Landlord he was not following proper tenancy procedures, the Landlord became upset and raised the rent to \$500.00 per month as of June 1, 2010. Then on June 2, 2010 the Landlord started a heated argument with the Tenant and the police were called. The Landlord was told by the police, not to enter the Tenant's suite without proper notice. On June 3, 2010 the Tenant returned home to find a notice to end tenancy on his table which was evidence to him that obviously the Landlord had been in his suite again. The Tenant referred to his evidence which included a dated chronological list of events where the Landlord continued to breach the *Act*, enter his unit illegally, tamper with his possessions, and cause purposeful disruption to his tenancy between May 31, 2010 and June 18, 2010.

On June 18, 2010 the Landlord initiated another fight and came after the Tenant with one of the Tenant's golf clubs. The Tenant stated he defended himself and held the Landlord to the ground, at which time the Landlord's fiancée called the police. The Police attended and arrested the Tenant. He stated that when he questioned why he was being arrested and not the Landlord who assaulted him, he was told that because there was not enough evidence to prove who initiated the attack and because the Landlord owns the property and resides there, they have to remove the Tenant in order to keep the peace. He was seen by a doctor who said he had suffered a concussion, a black eye, and lacerations on his back as supported by his photographic evidence. He was released the next day on conditions that he not contact the Landlord or return to the property without police escort.

He was allowed to attend the unit for one hour, to remove some necessities and personal belongings. He made the arrangements and returned to the property June 20,

2010, with police escort, and it was clear the Landlord had been inside the suite going through the Tenants possessions as he noted that some of his possessions had been removed. Between June 21, 2010 and July 6, 2010 the Tenant had arranged to have his vehicles removed from the property and rented a cat trap to retrieve his cat. He noticed that his vehicles had been tampered with and damaged.

The Tenant attended a Dispute Resolution hearing on July 7, 2010 to dispute the Notice to End Tenancy that was left in his suite on June 3, 2010. The Tenant was granted an Order to allow him and a moving company access to the suite to move his possessions out of the unit. When they arrived the Tenant saw how many of his possessions had been removed or tampered with, and someone had begun to pack some of them. The Landlord had cleaned out the fridge, removed all of his food, and left whatever he did not want to take on the counter. The Tenant took pictures as soon as he arrived and copies are in his evidence. The Landlord began another heated argument while they were there so the police escort told the Tenant to leave and instructed the movers to take only the items the Landlord told them to take. He advised that he will be submitting two more written submissions, one from the police and one from a neighbour to the Landlord. I instructed the Tenant that the two additional submissions must be sent to the *Residential Tenancy Branch* no later than April 2, 2011, if he wishes me to consider them in my decision.

The Tenant provided a detailed summary of his monetary claim which is itemized in the table in my analysis. The items listed are costs incurred for having to move, without proper notice, to repair items that were damaged by the Landlord, and a list of the items which are missing. He referred to the letter provided by the moving company which states that upon their arrival the movers were instructed by the police officer to take only what the Landlord deemed were the Tenant's possessions. The Tenant advised that he had provided the movers with a list of his possession before their attendance however they had to follow the police officer's instructions.

Analysis

I have carefully considered the following evidence which included, among other things, written submissions from the moving company, numerous photos of the Tenant's possessions that are now missing or damaged, copies of receipts for costs incurred after being evicted illegally, receipts for items the Tenant had to replace that were damaged or taken by the Landlord, and a notarized letter from the Landlord's neighbour confirming he witnessed the Landlord going in and out of the Tenant's suite on numerous occasions between June 20, 2010 and August 4, 2010, as well as confirming the Landlord was at his property during the month of November 2010.

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by his evidence. Sections of the Act that I have listed in my decision are listed at the end for reference.

The Tenant has provided testimony which describes what I find to be an egregious breach of the Act by the Landlord. The Landlord has illegally evicted the Tenant, entered a rental unit in breach of section 29(d) of the Act, and seized or withheld the Tenant's personal possessions.

It is clear from the Tenant's testimony that he found this forced eviction to be extremely frustrating, confusing and upsetting. Being the one arrested when he was defending himself and his home, the stress of attempting to find a solution to the forced eviction, and the need to move without access to the normal personal resources that he had been denied by the eviction, all contributed to what I have determined was a complete and utter loss of the reasonable expectation of security and right to quiet enjoyment that a Tenant is entitled to under section 28 of the *Act*.

The actions of the police in this matter, as described by the Tenant during the hearing, lead me to determine that the police were simply attempting to keep the peace in a manner which failed to consider the Landlord was in breach of the *Residential Tenancy Act* and the Landlord did not possess an Order of Possession as required by section 55 of the *Act*. During a time when the Tenant could reasonably be expected to receive support from the authorities, he was left to cope with being arrested and a forced eviction.

I have determined that the Landlord has ignored the *Act* and summarily evicted the Tenant without regard for the consequences of these actions. The Landlord chose to issue a Notice to End Tenancy, thus utilizing the remedy available to him and subsequently ignored the *Act* and illegally evicted the Tenant. I have determined that the Landlord was aware of remedies available under the Act, yet he chose to ignore his responsibilities and due process in relation to obtaining an Order of possession. There was no benefit to the Tenant, who was denied the right to due process under the *Act*; therefore I approve his claim for monetary compensation as follows:

#	Initial costs incurred	AMOUNT
1	Moving company invoices (Moving and Storage)	\$2300.32
2	Towing of vehicles to be stored	583.71
3	Legal Service of documents to Landlord (due to no contact order)	121.86
4	Cat trap rental to recover cat	164.64
5	Replacement of broken cell phone	67.19
6	Canada Post receipts (change of address and registered mail)	67.01
7	Interim emergency rent paid June 19 – August 9, 2010	1,000.00
8	Living expenses June 19 – August 9, 2010 (10/day x 52 days)	520.00
9	Photographs for evidence	35.28
	SUBTOTAL	\$4,860.01

I accept the Tenant was forced to incur the expenses as listed above as a direct result of the Landlord's breach of the *Act*. Therefore, in accordance with section 67 of the *Act*, I approve the Tenant's claim of **\$4,860.01** as listed above.

	Future rent and cost to repair vehicles	
10	Rent at new address for 12 months	9,600.00
11	Invoices to repair two vehicles	100.41
12	Cost to replace ICBC decal that was stolen off of vehicle	18.00
13	Storage insurance for two vehicles	147.00
14	Locking gas cap to protect vehicle	32.57
15	Damaged mirrors on Nissan Pulsar	150.00
	SUBTOTAL	\$10,047.98

The evidence supports the Tenant incurred or will incur these expenses. That being said, there is insufficient evidence to support the Landlord caused the claimed damages to the Tenant's vehicles as they were outside of the rental unit and could be accessed by anyone. I accept the Tenant will have to pay rent for the next 12 months; however I do not accept that future rent in a different location would be the responsibility of the Landlord named in this dispute, as the Tenant would have to pay rent no matter where he chose to live. Based on the aforementioned I hereby dismiss his claim of \$10,047.98.

	Damaged Items Not Replaced Prior to the Application	
16	Prescription glasses – damaged and left outside during arrest	600.00
17	Shinsonic surround stereo system – wilfully damaged	800.00
18	45 year old plastic baby chime – sentimental value – damaged	1,000.00
	SUBTOTAL	\$2,400.00

The evidence supports these items were damaged as a direct result of the Landlord's breach of the *Act*. The Landlord had no right to be in the Tenant's rental unit nor did he have a right to be packing the Tenant's possessions, which are both in direct violation of sections 28 and 29 of the *Act*. Since making his application the Tenant has replaced his

prescription glasses and provided testimony that the replacement cost was higher than the amount being claimed. I find the amounts claimed to be reasonable and I hereby award the Tenant **\$2,400.00** in accordance with section 67 of the *Act*.

	Missing Possessions	CLAIMED	AWARDED
19	Computer desk and chair	\$600.00	\$300.00
20	Framed picture of Elvis Presley – sentimental value	1,250.00	1250.00
21	Computer audio surround system	400.00	400.00
22	Food Contents of fridge and freezer that were taken	500.00	500.00
23	2 oscillating stand up fans	80.00	80.00
24	Kitchen table and 2 chairs	300.00	300.00
25	TV wall unit	500.00	400.00
26	Barbeque propane tank	60.00	60.00
27	Ironing board	50.00	50.00
28	Timberline mountain bike	1,100.00	900.00
29	Kenmore vacuum model 848	600.00	400.00
30	3000 Watt oil-filled heater	90.00	90.00
31	Bar clamp set 12 -36"	85.00	85.00
32	Two fly swatters	5.00	5.00
33	Two tins of coffee stored in bathroom closet	20.00	16.00
34	24 roll pack of toilet paper	17.00	14.00
35	Black wooden school/chime clock – sentimental value	125.00	125.00
36	Large leopard picture – sentimental value	250.00	250.00
37	4 black and white landscape pictures	400.00	400.00
38	2 bathroom pictures	50.00	50.00
39	Homemade back scratcher	25.00	10.00
40	Two collector cars with Standard Auto Glass decals – awards	1,000.00	500.00
	SUBTOTAL	\$7,507.00	\$6,185.00

Section 65(e) of the *Act* provides the Director the authority to Order a landlord to return a tenant's property that was seized or received by the landlord. Therefore I hereby Order the Landlord to return all of the Tenant's possessions that are under the Landlord's control or in his possession.

That being said, after considering the Landlord's previous actions, I am not satisfied the possessions, if returned, would be in an undamaged condition.

After careful consideration of the evidence, and in the absence of actual replacement receipts, I have awarded the Tenant amounts which I consider to be reasonable for the items being claimed for a total of **\$6,185.00**, pursuant to section 67 of the *Act*.

The Tenant has primarily been successful with his application; therefore I award recovery of the \$100.00 filing fee.

Monetary Order – The Tenant is entitled to a monetary order as follows:

Initial Costs Incurred	\$4,860.01
Damaged items not replaced prior to application	\$2,400.00
Missing possessions	\$6,185.00
Filing fee	100.00
TOTAL AMOUNT DUE TO THE TENANT	\$13,545.01

Conclusion

I HEREBY approve the Tenant's monetary claim in accordance with Section 67 of the *Act*. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$13,545.01**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the Landlord to return all of the Tenant's possessions which are under his control or in his possession, pursuant to section 65 of the *Act*.

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: March 30, 2011

Residential Tenancy Branch