



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDC, PLS, RPP, LRE, POT, FF

### **Introduction**

This hearing was convened by way of conference call in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord provide services or facilities required by law; for an order that the landlord return the tenant's personal property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an Order of Possession of the rental unit and to recover the filing fee from the landlord for the cost of this application.

The landlord and the tenant both attended the conference call hearing, provided affirmed testimony and were given the opportunity to cross examine each other on their evidence. The parties also provide evidence in advance of the hearing. The landlord also called 2 witnesses who provided affirmed testimony and were subject to cross examination by the tenant.

All evidence and the testimony provided by the parties and the witnesses have been reviewed and are considered in this Decision.

At the outset of the hearing, the tenant advised that the tenancy has ended, and therefore the tenant withdraws the applications for an order that the landlord provide services or facilities required by law; for an order suspending or setting conditions on the landlord's right to enter the rental unit; the application for an Order of Possession of the rental unit; and the application for recovery of the filing fee from the landlord for the cost of this application.

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

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord return the tenant's personal property?

### **Background and Evidence**

The parties agree that this month-to-month tenancy began on May 1, 2011 and ended on May 14, 2011. Rent in the amount of \$700.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and the tenant has not paid rent for the month of May, 2011. On or about April 30, 2011, the landlord collected a security deposit from the tenant in the amount of \$350.00 which was returned to the tenant on May 14, 2011. The landlord did not cause a move-in condition inspection report to be completed at the outset of the tenancy, however, the property manager completed a walk-through of the rental unit with the tenant. No move-out condition inspection report was completed. The rental unit is ½ of a duplex, and the tenant also has 3 children.

The tenant testified that on May 14, 2011 when the tenant arrived home from work all of the tenant's belongings were outside in the carport and the locks to the rental unit had been changed. The tenant's cat and her 3 kittens were in the shed. The tenant looked in the window and saw her purse on the counter and some other belongings. The tenant could not get the key for the rental unit to work, so one of the tenant's children pushed on the door and it opened. They were upset and wanted to get their belongings.

The tenant further testified that about a week prior, the landlord, the property manager and another man showed up and started to yell at the tenant. The tenant didn't know that one of the people was the landlord until the landlord was found in the kitchen of the rental unit when the tenant came out of the shower. The landlord then began to yell and scream at the tenant and the tenant's daughter. The tenant later discovered that the other man was a bi-law enforcement officer.

The tenant further testified that a tenancy agreement was signed by the parties when the security deposit was paid, but the tenant did not receive a copy.

After the tenant found the belongings in the carport, the tenant moved some of it into a friend's house and stayed with friends until a new rental unit was obtained effective June 1, 2011, and the children stayed with other friends.

The tenant also testified that the landlord was very abusive on both occasions to the tenant and the tenant's daughter.

The tenant also testified that the tenant had cleaned and painted bedrooms during the short tenancy. Also, the tenant had to leave food in the house, which was not reimbursed by the landlord. The tenant also had to place the children in other homes and also had to pay for food for the children.

The tenant also testified that in the pile of belongings found in the carport the tenant located an amplifier owned by the tenant or the children, which contained a hole in it when it was recovered. Also the tenant's couch was new and had a hole in the fabric as well as chips in the legs. The couch was also thrown in the carport by the landlord.

The tenant claims \$225.00 for the cost the tenant would have had to pay for storage, \$200.00 for a truck rental that was rented from a friend, \$100.00 for the cost of fuel, \$50.00 for the paint for the bedroom, \$12.00 for carpet shampoo, \$800.00 for food, being \$600.00 for the children and \$200.00 for the tenant, \$200.00 or \$225.00 for lost food, \$150.00 for the amplifier, \$500.00 to replace the couch, \$197.97 for the dresser, \$767.20 being an estimate for a moving truck to get all the tenant's belongings together and to the new rental unit because the tenant still has belongings in numerous places, and \$2,100.00 for punitive damages for being separated from the children, loss of work and humiliation and anxiety, caused by the landlord's actions.

The tenant also states that a mattress, 2 bikes, a basket ball, children's items and a cabinet are still at the rental unit owned by the landlord.

During cross examination, the tenant testified that the tenant has 1 dog, a cat with 3 kittens and a hamster.

The landlord testified that the property manager had told the tenant that if the tenant cleaned the carpets the tenant could move in early. On May 12, 2011 the landlord spoke to the tenant about getting rid of the tenant's dogs, to which the tenant responded that the tenant didn't own the dogs, and then the tenant started to yell at the landlord. The landlord disputes that the landlord entered the rental unit uninvited.

The landlord further testified that the rental unit was an absolute mess, but the landlord did not go into the rental unit when the tenant was not at home. The landlord stated that the property manager had a key, not the landlord.

The landlord received letters from the City for 3 by-laws breached by the tenant; for unsightly premises, weed control and for garbage removal. The landlord also had to face numerous complaints from neighbours, and the rental unit had been damaged. The landlord's evidence states that the landlord was totally at the breaking point which is the reason for the landlord's actions.

The landlord also testified that the tenant's items were removed from the rental unit, but the landlord did not throw it into the carport and nothing was broken. The landlord was getting complaints from everywhere, and the rental unit smelled of cat feces.

The first of the landlord's witnesses testified that he is the landlord's spouse and was with the landlord when the landlord received complaints about the tenant's animals. On or about May 12, 2011, when they went to the rental unit, animal control people were there. The landlord knocked on the door and the tenant let the landlord in. The witness and the bi-law enforcement officer remained outside, but the witness testified that he could hear the conversation. The landlord told the tenant that her pets had escaped, and that's why the bi-law officer was there. The tenant got upset and asked the landlord to leave, and all three parties left. He further testified that dogs were in the house, but there was nothing that the bi-law enforcement officer could do.

On May 14, 2011 the landlord and the witness removed the belongings of the tenant and placed them in the carport. The witness was at the house, renovating the unit next door, when the tenant came home from work. The witness heard a loud noise and the door frame cracking.

A few days later, the tenant returned with a van and picked up some of the belongings and left the rest. A mattress, a TV or monitor, a large china cabinet and a bike are still at the rental unit.

The other witness of the landlord is the property manager, who testified that the tenant wrote the number of pets that she owns and references on an application. When the witness attempted to get the rent, the tenant gave excuses or would not return the witness' calls.

The witness also testified that no tenancy agreement had been signed by the parties, but the witness had intended to get the tenant to sign one on May 1, 2011. The tenant gave the witness \$350.00 for the security deposit, and then 2 days later told the witness that the tenant would try to get more money from welfare and gave the witness a form to fill out, which was completed.

The tenant had told the witness that the tenant had 1 dog, 1 cat, 2 kids and did not mention any other animals. The witness stated that she saw 3 dogs and no cats. When the witness went into the unit, there were no dogs, but 2 large cats and kittens. The witness phoned the tenant to tell the tenant that the tenant's belongings were outside, and then called again, but the tenant responded that the tenant was babysitting and couldn't go right away.

The landlord feels the tenant lied to the property manager about the number of kids and pets the tenant had in order to secure the rental unit.

## **Analysis**

The *Residential Tenancy Act* sets out very clearly how a tenancy ends. If the tenant fails to pay rent when it is due, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any date after the date rent is payable under the tenancy agreement. The tenant then has 5 days to dispute the notice to end the tenancy or pay the rent in full. If the tenant pays the rent within that 5 day period, the notice is of no effect. If the tenant disputes the notice, a hearing date is scheduled by the Residential Tenancy Branch and if the tenant cannot prove that rent was paid or that the tenant had the right to withhold rent, the landlord would receive an Order of Possession. If the tenant does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenancy ends.

In the event that the landlord has cause to evict the tenant, the landlord is required to serve the tenant with a 1 Month Notice to End Tenancy for Cause.

The landlord cannot, under the *Act*, move the tenant from the rental unit.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, it is clear that the landlord has not complied with the *Act*, and the tenant has therefore satisfied element 2 in the test for damages. The tenant, however, has not satisfied elements 1 or 3 with respect to all items claimed by the tenant. The tenant has provided an estimate from a moving company in the amount of \$767.20 to move the tenant's belongings from various places, and I find that the tenant is entitled to recover that amount from the landlord.

I also find that the tenant is entitled to food for the tenant and the children, although I find that the tenant's claim for \$800.00 is somewhat excessive for a 2 ½ week period until the tenant secured a new home, and that \$500.00 is justified in the circumstances. I also accept the evidence of the tenant that about \$200.00 worth of food was left in the rental unit that the tenant was unable to retrieve, and the tenant is entitled to recovery of that sum.

The *Residential Tenancy Act* also requires a landlord to provide the tenant with the equivalent of one month's rent if the landlord requires the tenant to move for the landlord's use of the rental property, and I find that amount is justified in this case for moving expenses.

With respect to the tenant's claims for storage, truck rental, fuel, paint, carpet shampoo, the amplifier, the couch, and the dresser, I find that the tenant has failed to prove those amounts and has not satisfied elements 1 or 3 of the test for damages.

The tenant has also claims punitive damages which I cannot award. Punitive damages are damages to punish a wrong-doer. I do find, however, that the tenant is entitled to aggravated damages due to the actions of the landlord, and I find that the equivalent of one month's rent is justified in the circumstances.

The landlord's witness testified that the tenant's mattress, a TV or monitor, large china cabinet and a bike still remain at the rental unit and I find that the tenant is entitled to recover those items.

The landlord has claimed that the tenant failed to pay any rent, but the landlord has not applied for dispute resolution claiming that amount from the tenant, and therefore, I cannot deal with that claim.

In summary, I find that the tenant is entitled to \$767.20 to move belongings from various places to the new rental unit; \$500.00 for food; \$200.00 for food left in the rental unit, \$700.00 for moving expenses caused on the day the landlord moved the tenant out of the rental unit; and \$700.00 for aggravated damages; for a total of \$2,867.20.

## **Conclusion**

For the reasons set out above, I hereby order the landlord to provide the tenant with the tenant's belongings, specifically a mattress, a TV or monitor, the large china cabinet, and bicycle. I further order the landlord to provide the tenant with any other items belonging to the tenant that are at the rental unit or otherwise in the possession of the landlord.

I further grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,867.20. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenant's applications for an order that the landlord provide services or facilities required by law; for an order suspending or setting conditions on the landlord's right to enter the rental unit; the application for an Order of Possession of the rental unit; and the application for recovery of the filing fee from the landlord for the cost of this application, are hereby dismissed without leave to reapply as withdrawn by the tenant.

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: July 15, 2011.

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Residential Tenancy Branch