



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, RPP, AAT, OLC, FF

### Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to return the tenants personal property, an Order to allow the tenant access to and from the unit or site, an order for the landlord to comply with the Act and to recover the filing fee for this application.

The hearing documents were served to the landlord by posting them to the landlords' door on or about June 17, 2011. However, section 89 of the *Act* states an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The landlord agrees she did receive the tenants' application, notice of hearing and evidence. Therefore under s. 71(2) of the *Act* I consider that the documents not served in accordance with section 89 of the *Act* have been sufficiently served for the purposes of this *Act* and the hearing continued.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. At the hearing the landlords' agent gave evidence and was sworn in as a agent for the landlord not as her legal representative. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to return his personal belongings?
- Is the tenant entitled to an Order for the landlord to allow him access to his unit?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

Both parties agree that this tenancy started on January 01, 2011. This is now a month to month tenancy and the rent for this unit is \$650.00 which is due on the first of each month. The landlord is the tenants' sister and previously he shared a suite at the property with his sister and then rented a separate unit from her.

The tenant testifies that the landlord has denied him access to the garage where his tools are stored. He states the landlord has locked the doors and he cannot now get his tools when he needs to work. He states he did have access up to the end of February, 2011 and then the landlord put locks on the door. The tenant states he asked the landlord for his tools

and was told by her agent that he would come to the property on June 11, 2011 to allow the tenant to get his tools. The tenant states the agent did not arrive at the property on that date. The tenant testifies that on a day he had arranged to meet the agent at the property he had arranged to meet him after he had finished work. When he arrived home he found the locks had been changed and he could not gain access to the garage. He states he then called the agent and was told he would be there after he had played ball.

The landlords' agent who is also her lawyer testifies that the tenant has been residing at the property for a number of years with his sister. There were problems between them and another tenant so in January, 2011 the tenant started a tenancy of a separate suite at the property. Before his tenancy started he did store his tools and equipment in the garage to which he had access. However, in the tenancy agreement addendum it clearly states that the tenant does not have access to the remainder of the property without the consent of the landlord.

The landlords' agent testifies that he did attend the property to meet with the tenant to ensure he had access to his tools but the tenant did not answer his door. The landlords' agent testifies that he has asked the tenant on two occasions in his capacity as the landlords' lawyer to list any tools he owns and they can then be returned to him. He states on the second occasion he arranged to meet the tenant he did not show up. He states that two weekends ago he was at the landlords' property working, the garage door was open and the tenant walked by to walk his dog but did not attempt to get his tools out or ask the landlords' agent for them.

The landlord testifies that the garage door had to be locked as this is an access area to her house. She states the tenant would leave the doors either open or unlocked which gave open access to her house. The landlord states she then decided to put a lock on the garage door for security. The landlord testifies that all the tenants' tools have been boxed up and are waiting for him to collect them. She states his camping and sporting gear and his mechanical equipment are also waiting for his collection.

The landlord testifies that the other items on the list are items which belong to her. She states the tenant has included on his list of belongings items for her house which she paid for. The tenant did fit some of these items such as flooring, taps and counter tops and his labour costs were in lieu of rent when they lived in the basement unit.

The tenant left the call at approximately 2.03.p.m; attempts were made by the Dispute Resolution Officer to contact the tenant but the tenant did not dial back into the call. The line remained open for another 10 minutes and the hearing was ended after this time.

The landlord states she wants the tenant to remove his belongings and agrees to set up a prearranged time and date when he will have access to the garage to remove his mechanical tools, his gardening tools, and his camping and sporting gear. The landlord agrees she will write to the tenant and give him two opportunities to agree a mutually convenient time and date for this to occur.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and the landlord witness. I have considered the evidence up to the time the tenant left the hearing. With regard to the tenants claim for a Monetary Order for money owed or compensation for damage or loss; in this matter I find the tenant has provided insufficient evidence to support this section of his claim for \$17,000 and has not shown how he has mitigated his loss by arranging a mutually convenient time and date to collect his belongings from the landlord.

At the hearing the landlord has agreed to give the tenant two opportunities to agree a mutually convenient date and time when he can access the garage to collect his mechanical tools, gardening tools and his sporting and camping gear. If the landlord fails to give the tenant two opportunities to collect his belongings as listed above then the tenant is at liberty to file another application seeking a Monetary Order in compensation for these belongings.

The tenant has provided no evidence to support his application for an Order for the landlord to comply with the *Act* and this section of his application is dismissed without leave to reapply.

The tenant has stated that he has not been denied access to his rental unit and his tenancy agreement addendum section G does state that the tenant does not have access to any other areas of the property without the consent of the landlord. Therefore, the tenants' application seeking an order to allow him access to or from his unit is dismissed.

### Conclusion

The tenants' application for a Monetary Order is dismissed with leave to reapply in the event the landlord does not give him two opportunities to arrange a mutually convenient time for the collection of his belongings as listed above.

The remainder of the tenants' application is dismissed without leave to reapply.

As the tenant has been largely unsuccessful with his application it is my decision that he must bear the cost of filing his own application.

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 12, 2011.

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Residential Tenancy Branch