



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RPP, OPT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 54;
2. A Monetary Order for damage or loss - Section 67;
3. An Order to return the tenant’s personal property - Section 65/67; and
4. An Order for the Landlord to comply with the Act - Section 62.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

Prior to the Hearing and at the Hearing the Landlord submitted that the dispute was outside the jurisdiction of the Act and provided the file numbers of two previous decisions made in relation to a dispute involving two other of their tenancies. The Landlord did not provide copies of these decisions to the Tenant and states that these decisions are proof that the dispute in relation to the current application and tenancy is also outside the jurisdiction of the Act.

Section 64 of the Act provides that each decision or order must be made on the merits of the case as disclosed by the evidence admitted and that decisions are not binding in relation to any other decision. Without inquiring into the facts, findings or orders of these decisions, given this section and as this application addressed a different tenancy than those at issue in the previous decisions, I find that I am not required to be bound by the findings of any previous decision and therefore am not bound to make the same jurisdictional finding as may be found in the two decisions cited by the Landlord.

### Issue(s) to be Decided

Does the Act apply to the dispute?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to return of personal property?

Is the Tenant entitled to an Order that the landlord comply with the Act?

### Background and Evidence

The tenancy of a single room began on June 14, 2010. Rent in the amount of \$650.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$250.00. The Parties signed a tenancy agreement that states that the tenancy is not governed by the Act but by the policies as set out in a separate document also signed by the Parties (the "Policies"). The Policies include a term that does not allow overnight guests and a term that allows the immediate termination of a tenancy for non-compliance with the policies.

The Landlord states that the unit is one of 69 units in a building owned by one society and that another society manages the tenancies in these units. The units are all single room units with no kitchen however tenants have access to a common cooking area in the building.

The Landlord states that 57 of these units, including the Tenants' unit, are transitional units offered on a first come first served basis and that anybody can apply to rent a unit. The Landlord states that applicants are screened to find out where they are coming from and that a certain percentage of applicants are not housing ready. The Landlord states that the tenants in these units are homeless or hard to house tenants, coming primarily from prisons, shelters and hospitals. The Landlord states that no formal assessment takes place to make determinations of ability to live independently in relation to these units and that while these tenants are offered assistance with obtaining alternative housing, not all tenants require or need this assistance. The Landlord states that tenants are required to sign a lease and that the lease notes that the units are not covered under the Act. The Landlord states that security deposits are taken from the tenants in these units. The Landlord states that there is not one place that tenants are transitioned to following the end of their tenancies at the building and that there is no policy used to limit the time that the tenants are able to occupy the unit. The Landlord states that children and parents with children are not allowed in the units.

The Landlord states that the remaining twelve of these units are not transitional units as these units contain long term tenants from prior to the Society taking over management. The Landlord states that the long term tenants are a different group of tenants as they are able to live independently.

The Landlord states that 1 staff person works at the building during the day and that these staff provide ad hoc advocacy and referral assistance to the tenants with outside agencies however these services are not advertised. The Landlord had difficulty in

providing a title for this staff and stated that this person could be called a tenant support team worker or advocate. The Landlord states that there is no staff in place over night.

The Tenants state that the units, including the Tenants unit, are supportive housing units and not transitional housing within the meaning of the Act. The Tenants state that transition housing must provide more than just house hunting help and must offer transition into other housing provided by the Landlord or any other agency. The Tenants state that the Landlord does not follow other transition housing models and that transition housing is distinct from supportive housing in that transitional housing is short-term and supportive housing provides ongoing housing. The Tenant states that they did not require assistance with house hunting and that the Landlord did not provide such assistance to them. The Tenants state that when they started looking for other housing, the Landlord provided them with a reference letter dated June 16, 2011 that states that the Tenants always paid their rent on time and the they were "looking for housing better suited to their needs". The Tenant states that the Landlord's website does not use the term "transitional housing" anywhere on their website that provides information about the housing offered and that the housing offered is called supportive housing and therefore under the jurisdiction of the Act.

On June 20, 2011, the Landlord changed the locks to the Tenants' unit and cancelled the fob to the building so that the Tenants could not access the unit. The Landlord states that the Tenant had breached a rule by allowing a person to stay overnight in the unit and that after a month's verbal notice to the Tenant to stop allowing overnight guests, the Landlord told the Tenant that they could no longer stay at their unit. The Tenant states that the Landlord only gave the Tenants' four hours to pack but did not provide them with any boxes to pack with and as one of the Tenants is currently suffering from cancer they were limited in their ability to find packing materials and a place to take their belongings. The Tenant states that the Landlord has refused to allow the Tenants back into their suite, have kept their belongings and the Tenants are now in an emergency shelter. The Landlord states that the personal belongings will be kept by the Landlord until July 31, 2011 and that they can collect their belongings anytime between 8:00 a.m. and 4:00 p.m. daily. After this date, the Landlord states that the Tenants' belongings will be placed in the garbage.

The Tenants state that the Landlord returned only \$150.00 of the security deposit. The Landlord states that \$100 was retained from the Tenants' security deposit to pay for the cleaning of the unit after the Tenants had been locked out. The Landlord states that in relation to the assistance offered the Tenants, they have only suggested other housing and the Tenants have never asked for help to find alternate housing.

### Analysis

Section 4(f) of the Act provides that the Act does not apply to “living accommodation provided for emergency shelter or transitional housing”. The Act does not define “transitional housing” however it is clear from the word “transition” that the meaning indicates a temporary state between movement from one point to another. Such housing in the present context then implies that the accommodation is temporary and time limited or an intermediate step between homeless or at risk of being homeless and being permanently housed. A key determinant of transitional housing therefore would be the length of tenancy offered by the housing provider and the provision of assistance to move to permanent housing. In this present case, the Landlord has indicated that there is no limit on the length of time that a person can stay in the units. Further, the Landlord states that anyone can apply for the housing offered. This clearly indicates that the housing is not offered solely to those who are in a transition state. The lack of criteria for the determination of tenancies, combined with the undisputed evidence of the Tenant that the Landlord’s web site does not advertise the units being offered as transition units but as supportive housing leads one to reasonably expect that any tenant may become permanently housed in the units and that the units and the tenancies in those units are not transitional in nature.

Although the Tenants came from a shelter, a tenancy agreement was signed with no term indicated, a security deposit was taken and the rental amount for a one room is significant. These are all indicators of a regular leased accommodation that would otherwise fall under the jurisdiction of the Act. Although the Landlord states that services are offered to assist the tenants in these units with obtaining other housing, these services are provided on an ad hoc basis, are primarily house-hunting services, occupants of the units are not required to take the assistance offered and the Tenants received no help in obtaining other housing. The fact that the Tenants went from the unit to a shelter further contradicts the Landlord’s position that the unit is transitional to permanent housing.

Although the lease agreement signed by the Tenants indicates that the lease is not subject to the Act, Section 5 of the Act provides that landlords and tenants may not contract out of the Act and that any attempt to do so is of no effect. As such and given the above analysis of transitional housing, I find that the Tenants’ unit is not a transitional unit within the meaning of the act, the signed lease agreement does not operate to enable the parties to contract out of the Act and therefore the dispute between the parties may be resolved through the application of the Act.

Division 4 of the Act sets out how parties may end a tenancy. With the exception of Section 56 that provides for ending a tenancy early by a landlord, the Act requires the provision of a Notice to End Tenancy early and such Notice must comply with the form and content required by the Act and where given by a landlord must be in the approved form. The undisputed evidence indicates that the Tenants were not provided with any written notice and no application was made by the Landlord to end the tenancy early pursuant to Section 56. As such, I find that the Landlord ended the tenancy improperly and has no right under the Act to change the locks of the unit or stop the tenant from entering the unit. As a result of this action by the Landlord, the Tenants were left without housing and incurred a cost for hotel accommodation. As such, I find that the Tenants suffered a loss as a result of the Landlords breach of the Act and are entitled to compensation as claimed in the amount of **\$573.00**, which represents the costs related to alternate accommodation. As the Tenants stated at the hearing that they did not wish to return to the unit, this decision does not address whether the Tenants are entitled to an order of possession for the unit.

Section 24 of the Residential Tenancy Regulation (the “Regulation”) provides that a landlord may consider that a tenant has abandoned personal property of the tenant leave the property in the unit after vacating the unit and only if the landlord receives notice of the tenant’s intention not to return to the residential property. Section 25 of the Regulation further provides that a Landlord must store tenant’s personal property for no less than 60 days following the date of removal. There is no evidence to support that the tenant’s have abandoned the property. The Tenants state that the Landlord has kept their belongings and have made it difficult for the Tenants’ to retrieve their belongings. The Landlord states that the Tenants’ belongings are being stored on the residential property and that the Tenants are at liberty to collect their personal belongings any day before July 31, 2011 and between the hours of 8:00 a.m. and 4:00 p.m. Although the Landlord has provided a reasonable amount of time during the day to collect the belongings, I find that by giving the Tenant only to July 31, 2011 to collect their belongings, the Landlord is in breach of the Regulation. Further, the Landlord’s stated intention of destroying the property after this date is not only contrary to the Regulation but I find it to be heavy and high handed. I therefore find that the Tenants are entitled to an Order for the return of the personal property at the cost of the Landlord. Accordingly, I order the Landlord to return the belonging of the Tenants directly to the Tenants at their address as set out in the application no later than 3 days from the receipt of this decision. Should the Landlords fail to return the property as ordered, the Tenants are at liberty to make an application seeking damages in relation to the loss of their personal property.

As the Tenants are not returning to the unit and as the Landlord has not returned the full security deposit back to the Tenants, the Tenants are at liberty to make an application in relation to return of their security deposit.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$537.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

I order the Landlord to return the Tenants’ belongings to the Tenants at the Landlords cost.

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: August 2, 2011.

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Residential Tenancy Branch