



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LAT, MNDC

### Introduction

This matter dealt with an application by the Tenant for an Order permitting him to change the locks on the rental unit and for compensation for aggravated damages due to the Landlord allegedly entering his rental unit without notice or consent. The Tenant amended his application on November 29, 2011 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 29, 2011 however the Tenant claimed at the beginning of the hearing that the tenancy has ended. Given that the tenancy has ended, the Tenant withdrew his application to change the locks and to cancel the 10 Day Notice.

The Tenant said he served the Landlord in person on November 24, 2011 with his Application and Notice of Hearing (the "hearing package"). The Tenant said he also served the Landlord with a copy of his amended Application on November 29, 2011. Based on the evidence of the Tenant and given that the Landlord filed evidence noting the file number in this matter, 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 in the Landlord's absence.

### Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

### Background and Evidence

This month-to-month tenancy started sometime prior to November 2011. The Tenant said he gave the Landlord written notice on November 21, 2011 that he was ending the tenancy on December 15, 2011. The Tenant said the tenancy ended earlier, on December 9, 2011 when the Landlord "kicked him out."

The Tenant said he arrived at his residence on November 23, 2011 and found a note on his door from the Landlord that said she needed to speak to him and that "she had a key and would use it." The Tenant said he discovered that the Landlord had entered the rental unit while he was away and had "trashed" the rental unit and traumatized his two cats in the process. The Tenant said the Landlord was apparently angry because she believed the Tenant had received a shelter allowance for rent that day for

December rent and wanted him to pay it to her. The Tenant said the Landlord was the only other person with a key and she admitted to him and an RCMP officer that she had entered his unit because she felt it was “a Landlord’s privilege.” The Tenant provided photographs of the rental unit he said he took that day that show many of his personal articles thrown about the rental unit. The Tenant also provided a copy of a hand-written note he said the Landlord gave him the following day that read, “I hereby give you 24 hrs notice const. \*\*\*\* was here. She will be back to remove all belongings of mine tomorrow. Legally. Ha ha.”

### Analysis

Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including but not limited to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the Landlord’s right to enter under s. 29 of the Act.

Section 29 of the Act says that unless there is an emergency or the Tenant has abandoned the rental unit, a Landlord must not enter a rental unit for any purpose unless the Tenant gives permission, the Landlord gives the Tenant at least 24 hours written notice of the entry or the Landlord has an order of the Residential Tenancy Branch authorizing the entry.

In the absence of any evidence from the Landlord to the contrary, I find that on November 23, 2011, the Landlord entered the rental unit without the knowledge or consent of the Tenant or any authority under the Act and threw many of his belongings around. I find that the Landlord did not have a reason under s. 29 of the Act for the entry and therefore I conclude that the entry was illegal and the subsequent “trashing” of the Tenant’s belongings an act of malice.

RTB Guideline #16 – Claims in Damages describes “aggravated damages (in part) as follows at p. 3:

“These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behavior. They are measured by the wronged person’s suffering.”

I find the actions of the Landlord on November 23, 2011 on November 23, 2011 were willful and indifferent to the rights of the Tenant under s. 28 of the Act. I also find that the Landlord’s subsequent, hand-written “notice of entry” indicates that she was unrepentant for her actions and indifferent to the suffering she caused to the Tenant and the distress she caused to his cats. Consequently, I find that the Tenant is entitled to the compensation he has requested in the amount of \$325.00

Conclusion

A Monetary Order in the amount of **\$325.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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*.

Dated: December 15, 2011.

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Residential Tenancy Branch