



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC and RPP

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to return the Tenant's property and for a monetary Order.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As the evidence was not served on the Tenant it was not accepted as evidence for these proceedings. The Landlord was given the opportunity to introduce the evidence orally and to request an adjournment at any point in the hearing if the evidence was pivotal to the issues in dispute.

At the outset of the hearing the Landlord's legal counsel indicated that she did not wish to pursue the written request for an adjournment, which was submitted to the Residential Tenancy Branch on January 31, 2012.

### Issue(s) to be Decided

The issues to be decided are whether there is a need for an Order requiring the Landlord to return the Tenant's property and whether the Tenant is entitled to a monetary Order.

### Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit approximately four months ago; that he shared the rental unit with the Landlord's brother; that the rent of \$375.00 was paid directly to the Landlord by the Provincial Government; that the rent was due by the first day of each month; that a security deposit of \$180.00 was paid for this tenancy; that the Landlord returned that deposit of December 24, 2011; that on December 24, 2011 the Tenant gave the Landlord written

notice of his intent to vacate the rental unit by February 01, 2012; that the Tenant paid rent for December of 2011; and that the Tenant paid rent for January of 2012.

The Tenant stated that he was assaulted by his roommate on January 02, 2012 and that he has not been residing at the rental unit since that time, as he fears the roommate.

The Tenant stated that on January 05, 2012 he attempted to enter the rental unit and his key did not work in the lock. He stated that he phoned his roommate in an attempt to access the rental unit, but the roommate merely laughed at him. He stated that he went to the rental unit on several occasions after that date but has never been able to access the rental unit.

The Landlord stated that the locks to the rental unit have not been changed since the Tenant moved into the rental unit and that the key the Tenant has in his possession will still provide him with access to the unit.

The Tenant stated that on January 07, 2012 he placed a letter in the door jamb of the Landlord's rental unit, in which he informed the Landlord that he was unable to access the rental unit. The Landlord stated that he was not aware that the Tenant was unable to access the rental unit until he was served with the Tenant's Application for Dispute Resolution on January 18, 2012. He stated that he never received any other written or verbal notice of this issue.

The Witness for the Landlord stated that he was living in the rental unit with the Tenant in December of 2011; that he is the Landlord's brother; that the locks to the rental unit have not been changed since the Tenant moved into the rental unit; and that the Tenant stopped living in the rental unit on December 28, 2011 after they had a personal dispute; that he never saw the Tenant at the rental unit or outside of the rental unit since December 28, 2011; and that he never assaulted the Tenant in December of 2011 or January of 2012.

The Witness for the Tenant stated that the Tenant is currently living with her and they are personal friends; that the Tenant told her that he cannot access the rental unit as the locks have been changed; that she went to the rental unit with him in January and observed him try to open the door with the key; that the key did not work when she observed him attempt entry; that he went to the rental unit on a daily basis after January 05, 2012; and that she observed wounds on his face.

The Landlord and the Tenant agree the Tenant still has personal property in the rental unit. Both parties indicated that they were able to meet at the rental unit on February 07, 2012 between 3:00 p.m. and 6:00 p.m., at which time the Tenant will remove his personal property from the unit. The Landlord indicated that he would ensure that his brother is not at the rental unit during this time.

The Tenant is seeking a rent refund from January of 2012, as he was prevented from using the rental unit for the majority of this month. The Landlord contends that the Tenant is not entitled to a rent refund as he was not denied access to the unit by the Landlord.

The Tenant is seeking compensation for the cost of food, in the amount of \$600.00, as he was prevented from living in the rental unit for the majority of January of 2012. The Landlord contends that the Tenant is not entitled to this claim as he was not denied access to the unit by the Landlord.

The Tenant is seeking compensation, in the amount of \$1,000.00, as compensation for pain and suffering arising from being homeless for the majority of January of 2012. The Landlord contends that these proceedings are not the proper venue for a claim of pain and suffering.

At the conclusion of the hearing the Landlord's legal counsel asked the Tenant to return the key to the rental unit on February 07, 2012, and he indicated he would comply with that request.

### Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving that he was locked out of the rental unit rests with the Tenant and I find that the Tenant has submitted insufficient evidence to show that he was locked out of the rental unit.

In reaching this conclusion, I was strongly influenced by the absence of documentary evidence or evidence from an independent source that corroborates the Tenant's statement that he was locked out of the rental unit or that refutes the Landlord's statement that he was not locked out of the rental unit.

I find the testimony of the Tenant's witness, who confirmed that the Tenant was unable to access the rental unit with his key, was of little evidentiary value in this regard as her testimony was countered by the testimony of the Landlord's witness, who confirmed that the lock to the rental unit was not changed. As neither of these witnesses can be considered an unbiased witness, I find that they are not helpful in determining this matter.

The undisputed evidence that the Tenant did not reside at the rental unit for the majority of January of 2012, even though he paid rent, and that he still has property at the rental unit lends some credibility to the Tenant's claim that he was locked out of the rental unit, although it can be equally attributed to the fact the Tenant is fearful of his former roommate.

Conversely, the fact that the Landlord was seeking the return of the Tenant's key on

February 07, 2012 lends some credibility to the Landlord's claim that the locks were not changed, as the Landlord would not need to recover the key if the locks had been changed.

In the circumstances before me, I find the version of events provided by each party is reasonably credible. As I am unable to discount the evidence of the Landlord and his witness, I find that the Tenant has failed to meet the burden of proving that he was locked out of the rental unit.

As the Tenant has failed to establish that he was locked out of the rental unit, I dismiss his application for a monetary Order for a rent refund or for any other compensation arising from the alleged breach of the *Act*.

### Conclusion

As this tenancy has ended; the Tenant still has personal property in the rental unit; the Tenant no longer has legal access to the rental unit; and both parties have indicated they are able to attend the rental unit on February 07, 2012 between 3:00 p.m. and 6:00 p.m., I hereby Order the Landlord to provided the Tenant with unencumbered access to the rental unit during those hours on that date.

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: February 02, 2012.

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Residential Tenancy Branch