



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord's application: OPB, FF  
Tenant's application: MNDC, RPP, FF

### Introduction

This hearing dealt with cross-applications. The landlord applied for an Order of Possession. The tenant applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and an Order for return of his personal property.

### Preliminary and Procedural Matters

I heard that after filing the landlord's Application for Dispute Resolution the landlord regained possession of the rental unit. Accordingly, an Order of Possession is no longer required and the landlord's application is dismissed.

The tenant named two co-owners in filing his Application for Dispute Resolution. Only the female landlord appeared at the hearing. The female landlord stated that the male landlord had not been served with hearing documents. The tenant stated that he served each landlord via registered mail. The tenant was asked to provide the registered mail tracking number for the registered mail sent to the male landlord. The tenant could not provide this information.

When a respondent does not appear at the hearing the applicant bears the burden to prove the respondent was sufficiently served in a manner that complies with the Act. I found the tenant did not prove the male landlord was served and I amended the tenant's application to exclude the male landlord.

The landlord stated that she received the tenant's application September 20, 2012 and provided evidence in response; however, given the lack of time between receiving the tenant's application and the hearing date, the landlord's evidence was served upon the tenant late. The tenant acknowledged receiving the landlord's evidence September 24, 2012 and did not object to its inclusion. I accepted the late evidence.

The landlord pointed out that she was uncertain as to the basis for the tenant's monetary claim of \$10,990.00. I noted that the tenant did not provide evidence or

written submissions to the Branch prior to the hearing and informed the tenant, as the applicant, of his obligation to provide full particulars with his Application.

The tenant submitted verbally that his monetary claim of \$10,990.00 included compensation for loss of quiet enjoyment. I refused to hear such a claim as it was not identified or otherwise indicated on his Application and I granted the tenant leave to reapply with respect to loss of quiet enjoyment. Rather, I limited the tenant's submissions to those issues identified on the application pursuant to the principles of natural justice.

In light of the above, the remainder of this decision pertains to the tenant's claims that the female landlord is holding the tenant's possessions, gave improper notice to end the tenancy, and changed the locks pre-maturely.

#### Issue(s) to be Decided

1. Has the tenant established that the landlord is withholding his personal property?
2. Has the tenant established an entitlement to compensation for improper notice; the locks being changed; and, possessions not returned to him?

#### Background and Evidence

The tenant signed a tenancy agreement December 23, 2011 requiring him to pay rent of \$950.00 on the 30<sup>th</sup> day of every month on a month-to-month basis. On July 28, 2012 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the Notice) with a stated effective date of August 30, 2012. The tenant did not file to dispute the Notice.

The tenant submitted that he moved the majority of his possessions from the house on August 30, 2012; however, he needed help moving the TV and the male landlord agreed to help the tenant move it out of the unit on August 31, 2012. The tenant submitted that when he returned to the unit on August 31, 2012 the rental unit was boarded up and the locks were changed. The tenant is of the position the landlord has the following possessions: a TV, TV stand, and computer chair.

The tenant was of the position the effective date on the Notice was improper and that he should have had until August 31, 2012 to move out. The landlord also violated the Act by changing the locks to the unit on August 31, 2012. The tenant seeks return of the rent he paid for August 2012 as compensation for the improper effective date on the Notice and changing the locks.

The landlord submitted that the tenant moved out August 28, 2012 and did not return to the property after the evening of August 28, 2012. The tenant left behind abandoned possessions which the landlord had delivered to his parent's home on September 9, 2012. The locks were changed on September 14, 2012.

The landlord submitted that the tenant and the male landlord are co-workers and they had a private deal with respect to the male landlord holding the tenant's TV and TV stand as collateral for a loan. The co-owners do not live together and the female landlord does not have possession or know the whereabouts of the TV and TV stand.

The tenant acknowledged that he received the remainder of his possessions (except for the TV, TV stand and computer chair) delivered to his parent's home. The tenant denied that he gave his TV and TV stand to the male landlord under a private agreement.

### Analysis

Having considered the evidence before me, I provide the following findings and reasons with respect to the tenant's Application.

A party that makes an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### ***Improper effective date on Notice***

Where a landlord serves a tenant with a 1 Month Notice section 47 of the Act requires the effective date not be earlier than:

- One month after the Notice is received; and,
- The day before rent is payable under the tenancy agreement

The tenancy agreement signed by the tenant provides that the tenant is to pay rent on the 30<sup>th</sup> day of every month. Accordingly, by serving the tenant with a 1 Month Notice on July 28, 2012 the effective date could have read August 29, 2012 and been in compliance with the Act. Thus, the tenant was afforded more notice than required under the Act.

Since the last period the tenant paid rent was for July 30, 2012 - August 29, 2012 and the tenant submitted he had use of the unit until August 30, 2012 the tenant has failed to establish that he is entitled to return of the rent he paid for the last rental period. Therefore, this portion of the tenant's application is dismissed.

### ***Changing of locks***

I find the disputed verbal testimony insufficient to meet the tenant's burden to prove the locks were changed August 31, 2012 and that this caused him to suffer a loss.

### ***Return of Personal Property***

I find the disputed verbal testimony concerning the computer chair insufficient for me to conclude the landlord has the tenant's computer chair. Since the tenant bears the burden of proof I deny his request for an Order for its return or an award for compensation for its loss.

I also find the disputed verbal testimony insufficient to conclude the female landlord has the tenant's TV and TV stand. Even if the tenant established that the female landlord has the tenant's TV and TV stand, the tenant did not provide any indication or verification as to the value of the TV or TV stand. Therefore, I dismiss the tenant's request for an Order for return of the property or make an award for compensation for the property against the female landlord.

As the tenant did not satisfy me that he served the male landlord with this Application for Dispute Resolution and having heard from the female landlord that it is possible the male landlord knows of the location of the TV and TV stand, I grant the tenant leave to file a new Application for Dispute Resolution against the male landlord.

### **Conclusion**

The landlord's application for an Order of Possession was dismissed as the landlord has already regained possession of the rental unit.

The tenant's claims related to improper notice and changing of locks are dismissed without leave.

The tenant's request for an Order for return of his personal property against the female landlord are dismissed; however, the tenant has been granted leave to file a new application against the male landlord for an Order seeking return of his TV and TV stand only.

The tenant was also granted leave to reapply against either or both landlords with respect to claims of loss of quiet enjoyment.

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: September 25, 2012.

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Residential Tenancy Branch