



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AKAL DEVELOPMENT LTD.  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Introduction**

This hearing was to deal with an application by the landlord seeking a monetary order for rent owed and costs incurred by the landlord. The hearing was also to deal with an application by the tenant seeking the return of the security deposit, compensation for receiving a Two Month Notice to End Tenancy for Landlord's Use and loss of quiet enjoyment due to alleged harassment by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided landlord's Application**

Is the landlord entitled to monetary compensation under section 67 of the Act for damages and loss?

### **Issue(s) to be Decided Tenant's Application**

Is the tenant entitled to monetary compensation under section 67 of the Act?

Is the tenant entitled to a refund of the security deposit paid by the tenant at the start of the tenancy?

Is the tenant entitled to monetary compensation under section 51 of the Act?

### **Background and Evidence**

The tenancy started in May 2011 and the rent was \$450.00. A security deposit of \$225.00 was paid. The tenant testified that the tenant vacated the rental unit on March 31, 2013, pursuant to a Two Month Notice to End Tenancy for Landlord's Use. The

landlord testified that the tenant was still in the unit and had not returned the key by April 2, 2013.

The landlord testified that, because the tenant had not given back the key, the landlord incurred extra costs from a tradesperson he had brought to do some work on the rental unit on April 2, 2013. The landlord submitted an invoice showing charges of \$230.00 by the carpenter and helper for the loss of a day's work. The landlord is seeking to retain the tenant's security deposit in compensation.

In addition, the landlord testified that he is also seeking rent of \$450.00 for the month of April 2013 because the tenant had not vacated until April 2, 2013. The total claim by the landlord is \$780.00.

The tenant denied that he had remained in possession of the rental unit beyond March 31, 2013 and pointed out that, because the landlord was renovating the unit and not re-renting it, the landlord could not have incurred a loss of rent for April 2013 as being claimed, in any case.

The tenant testified that, after he had received a Two Month Notice to End Tenancy for Landlord's Use, the landlord's agent had repeatedly hounded him and acted in a confrontational manner. The tenant testified that the agent was insisting that the tenant sign an agreement to continue the tenancy, despite being served with the Two Month Notice to End Tenancy for Landlord's Use. The tenant stated that he suffered a loss of quiet enjoyment for the last month of his tenancy and is claiming compensation of \$450.00.

The tenant testified that the proposed new tenancy agreement being offered by the agent, attempted to impose an illegal rent increase by charging more for utilities. The tenant testified that, the conduct and demeanor of the agent made him feel threatened, particularly on one occasion when the agent confronted the tenant while he was in a public place. The tenant testified that he therefore decided not to challenge the Two Month Notice to End Tenancy and accepted the move out date of March 31, 2013.

The tenant testified that the landlord failed to pay the equivalent of one month rent, to which the tenant is entitled under the Act, for terminating a tenancy for landlord use. The tenant is claiming \$450.00.

The tenant testified that the landlord's agent did not show up to complete the move-out condition inspection on his final day, which was March 31, 2013. The tenant testified that the landlord has refused to refund his security deposit and the tenant is seeking monetary compensation of \$225.00.

### **Analysis – Landlord's Monetary Claim**

With respect to the landlord's claim for rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

However, I find that the landlord's Notice had ended the tenancy effective March 31, 2013. Therefore, I find that no rent was due on April 1, 2013.

I find that the arrears relate to a period *after* the tenancy was supposed to end.

I find that the landlord's claim for rental arrears, under section 26 of the Act, does not apply to this situation but constitutes a claim for *loss of revenue* for the two-day period during which the tenant was allegedly over-holding. .

I find that the claim for loss of revenue is a claim in damages under section 7 and 67 of the Act. Therefore, the landlord's application will be amended to include a claim for damages, comprised of loss of revenue, not rental arrears owed.

In regard to the landlord's claim for damages including loss of rent and repair costs, I find that an Applicant's right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord.

With respect to the rent of \$450.00 allegedly owed by the tenant for the month of April, 2013, I find that, even if I was satisfied that the tenant did over-hold, the applicable monetary claim would only be for a pro-rated amount for two days in April 2013.

In any case, I find that the landlord has not presented sufficient proof to verify that the tenant remained in the rental unit until April 2, 2013. I accept the tenant's testimony that he had relocated by March 31, 2013 but did not return the key on March 31, 2013 because the agent failed to attend the rental unit to do the move-out condition inspection report.

I further find that, because the landlord was planning on renovating, there was no loss of rent for April 2013 because the unit would not have been re-rented regardless.

Given the above, I find that the landlord is not entitled to \$450.00 for loss of rent for April 2013.

With respect to the landlord's claim that he incurred expenses of \$230.00 imposed by the landlord's contractor for the loss of a day's work, it is not clear why the work could not proceed.

I find that the landlord could have confirmed whether or not the unit was vacant prior to hiring the carpenter for the day. In the alternative, the landlord also could have accessed the unit using the landlord's key to provide entry for his contractor.

Based on the evidence presented, I find that the landlord's claim for the contractor's fees was not sufficiently proven and failed to meet element 2 of the test for damages.

I find that even if the tenant had been in possession of the rental unit on April 2, 2013, this fact would not have directly caused the landlord to incur the claimed expenditures or losses of \$780.00. For this reason, the landlord's monetary claim has no merit and must be dismissed.

### **Analysis: Tenant's Application**

In regard to the tenant's claim for compensation based on the Two Month Notice to End Tenancy for Landlord's Use, I find that section 49 of the Act states that a landlord may end a tenancy for landlord use by giving notice to end the tenancy effective on a date that must be:

(a) not earlier than 2 months after the date the tenant receives the notice, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. (my emphasis)

In this case, I find that the Notice to End Tenancy for Landlord's Use issued on January 29, 2013 purported to be effective March 31, 2013

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Act also states that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent.

Given the above, I find that the tenant is entitled to a refund of \$450.00 under the Act, due to the fact that the landlord had issued and served the tenant with a Two Month Notice to End Tenancy for Landlord's Use.

In regard to the tenant's claim for a rent abatement, I find that section 28 of the Act protects a tenant's right not to be bothered and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the tenant's testimony that his quiet enjoyment of the suite was disrupted by the conduct of the landlord's agent during the month of March 2013, and that this impacted the value of the tenancy.

I find that the fact that the tenant was repeatedly contacted while at home and even confronted off the premises by the landlord's agent, warrants a rent abatement of 50%. I grant the tenant compensation of \$225.00 as a rent

abatement reflecting the devaluation of his tenancy based on breaches of the Act by the landlord.

With respect to the return of the tenant's security deposit, I find that under the Act, the security deposit is always held in trust for the tenant and functions as a credit for the tenant.

I find that the security deposit and pet damage deposit, must be refunded at the end of the tenancy, unless the landlord has obtained a monetary order permitting the landlord to keep the funds in satisfaction of the cost of rent or damages, or unless the tenant has given written permission at the end of the tenancy allowing the landlord to retain the deposit. I find that the tenant is entitled to be compensated \$225.00 for the tenant's security deposit.

The total compensation owed to the tenant is \$900.00 comprised of \$450.00 compensation for the Two Month Notice under section 51 of the Act, \$225.00 abatement in rent for loss of quiet enjoyment and \$225.00 refund of the tenant's security deposit.

Based on the evidence before me, I hereby dismiss the landlord's application in its entirety without leave.

Based on the evidence before me, I hereby grant the tenant a monetary order in the amount of \$900.00. The order must be served on the Respondent and if necessary may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court

### **Conclusion**

The tenant's application is successful and the tenant is granted a monetary order for damages and the refund of the security deposit. The landlord's application is not successful and the claims are dismissed without leave.

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 08, 2013

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Residential Tenancy Branch