



# 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 Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, an Order that the landlord comply with the Act, an Order to force the landlord to return the tenant's property and an Order of Possession to the tenant.

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**

- Is the tenant entitled to receive a monetary order for damages and loss?
- Is the tenant entitled to an Order of Possession?
- Should there be an order against the landlord to comply with the Act and return the tenant's possessions?

### **Background and Evidence**

The tenant testified that the tenancy began in March 2013, the rent was \$375.00 and a security deposit of \$137.50 was paid.

The tenant testified that the landlord suddenly locked him out of his unit in April 2013 and removed all of his possessions. The tenant testified that he attempted to remain in the suite and called the police to assist, but was advised that it was best to avoid the

landlord. The tenant testified that he had paid his rent in full and had receipts to prove this, but that the landlord's illegal removal of the tenant's property deprived the tenant of all his possession including important paperwork, sentimental treasures and all of his worldly goods. The tenant testified that the landlord tested him to go to a certain address where he could find his missing items, but the tenant stated that the landlord's information was deceptive. The tenant testified that he never found out what happened to his property. The tenant's position is that his tenancy was never properly ended and he is entitled to an Order of Possession for the tenant.

The tenant testified that, since the illegal eviction, he has been homeless. The tenant is requesting compensation of \$6,375.00 for having been wrongfully evicted and reimbursement for his lost possessions.

The landlord testified that the tenant was issued a 10-Day Notice to End Tenancy for Unpaid Rent on April 1, 2013, and left of his own volition shortly thereafter. The landlord testified that either the tenant or some of his associates had removed all of his possessions. The landlord stated that the tenant had never paid any rent at all.

According to the landlord, the tenant returned to the unit, repeatedly trying to break into the complex and commit other illegal acts.

The evidence submitted by the landlord was comprised of a lengthy hand written statement pointing out flaws in the tenant's character, relationships and personal lifestyle as well as making serious accusations about criminal activities allegedly perpetrated by the tenant. The landlord supplied copies of private and personal documents belonging to the tenant, each featuring the landlord's handwritten observations respecting the tenant's character, history and lifestyle.

This documentation also included copies of official identification cards and personal data, evidently belonging to the tenant's girlfriend, and various other items, for reasons that are not clear. When questioned about how the landlord managed to obtain all of these private documents, the landlord claimed that he found them in the garbage.

In regard to the tenant's allegation that the landlord had directed the tenant to seek his lost possessions at a particular address, the landlord stated that he was merely making a suggestion to be helpful. The landlord did not explain why he appeared to be trying to assist the tenant, when, according to the landlord's written submission, the applicant is "a crazy mad man" and "a true criminal", who, after leaving voluntarily in compliance with the 10-Day Notice returned for the sole purpose of attacking the landlord and committing illegal acts.

The landlord also testified that the applicant is “not a tenant” at all, because nothing was signed and the papers submitted to the Ministry were only an “intent to rent”, which the landlord only consented to in order to help the tenant.

### **Analysis**

In regard to an Applicant’s right to claim damages from another party, Section 7 of the Act states that, if tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying 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 these 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,
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

I find that the Act provides that a tenancy remains in effect until such time it ends under section 44 of the Act. Before a landlord can validly end a tenancy for unpaid rent, or any other reason, the landlord must first:

- Issue and serve the tenant with a Notice to End Tenancy based on one of the valid reasons listed under sections 44 to 53 of the Act.
- If the tenant then refuses to vacate the rental unit pursuant to the Notice, the Act requires a landlord to then make an application for dispute resolution, to obtain an Order of Possession pursuant to section 55 of the Act.
- Following this, the landlord must serve the Order of Possession on the Tenant.

- Should the tenant not comply and remain in possession of the rental unit after service of the Order of Possession, the landlord would need to make application and obtain a Writ of Possession issued under the B.C. Supreme Court Civil Rules.. This is pursuant to section 57(2) of the Act.
- To enforce the writ the landlord must utilize the services of a registered bailiff to change the locks and remove the tenant's belongings.
- With respect to a tenant's personal belongings, the landlord would be required follow due diligence in safely storing any abandoned belongings in a secure place and not confiscate or dispose of them, except in accordance with Part 5 of the Residential Tenancy Regulation.

In this instance I find the landlord failed to follow any of the above statutory provisions contained in the Act or the Regulations.

Section 57(2) of the Act prohibits a landlord from taking actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a valid writ of possession issued under the Supreme Court Civil Rules.

Moreover, I find that the 10-Day Notice to End Tenancy issued by the landlord was not valid as it is dated April 1, 2013 for unpaid rent for the month of April 2013. I find that the tenant did not abandon the suite nor his property. In any case, I find that the landlord failed to comply with the Act with respect to complying with the regulations in caring for the tenant's property, even if it was found to be abandoned.

Accordingly I accept the tenant's testimony that his personal possessions were confiscated by the landlord. I also accept the tenant's explanation that he was not able to furnish evidence of his possessions, nor their value, beyond merely giving verbal descriptions, because everything he owned was unlawfully taken away or discarded by the landlord.

Section 25(1) of the Residential Tenancy Regulations states that the landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

Section 26 (3) of the Act states that, whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

- a) seize any personal property of the tenant, or
- b) prevent or interfere with the tenant's access to the tenant's personal property.

I find as a fact that the landlord did not comply with the Act or Regulations in any respect, but in particular, that the landlord failed to keep a written inventory of all items removed from the residence,

Therefore I find that I must rely on the tenant's testimony in regard to the value of the losses he incurred.

Accordingly, based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation for the wrongful eviction and confiscation of property in the total amount of \$6,375.00 which is the estimated pro-rated value given by the tenant for all of his worldly possessions removed by the landlord in violation of the Act.

With respect to the return of the tenant's security deposit, I find that a landlord always holds these funds in trust on behalf of the tenant. Pursuant to section 38 of the Act, the landlord has no right to retain the security deposit after the tenancy ends without making an application and obtaining an order to keep the deposit in compensation for damage or loss pursuant to section 7(1) and section 67 of the Act. Therefore, as this tenancy has permanently ended, I find that the landlord must also return the tenant's \$137.50 security deposit to the tenant forthwith.

I hereby issue a monetary order in favour of the tenant in the amount of \$6,512.50, comprised of \$6,375.00 for property loss and \$137.50 for the refund of the tenant's security deposit. This order must be served on the landlord and, if unpaid, may be filed in Small claims court and enforced as an order of that Court.

**Conclusion**

The tenant is successful in the application and is granted a monetary order for loss of possessions due to the actions of the landlord.

I hereby issue a monetary order in favour of the tenant for \$6,512.50. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if necessary.

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 12, 2013

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Residential Tenancy Branch