



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1960 ROBSON LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OLC MNDC RR PSF FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To return the personal property of the tenant pursuant to section 65(d);
- b) To obtain one free month's rent owed to them pursuant to sections 49 and 51;
- c) To be awarded a rent rebate of \$121.60 per month for 6 months and further compensation equal to two months rent; and
- d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated September 27, 2012 to be effective November 30, 2013 and it is undisputed that the tenant vacated according to the notice. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to a refund of rent, to one month's free rent and two months' compensation? Has the tenant proved on the balance of probabilities that the landlord has his personal property and/or that the landlord breached his right to privacy and peaceful enjoyment as guaranteed under section 28 of the Act. Is the tenant entitled to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The landlord requested an amendment to delete the private individual's name from the name of the Respondent, the tenant had no objection so the style of cause is amended to name only the corporation as the respondent. The undisputed evidence is that the tenancy commenced in August 2001, the monthly rent in 2012 was \$1179 and a Notice to End Tenancy for landlord's use of

the property under section 49 was served in September 2012. The tenants vacated in accordance with the Notice by November 30, 2012. The reason given on the Notice was that "The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant states that the Notice was incorrect for it was actually a janitor who was hired and not a caretaker but he did not dispute the Notice at the time. Now the tenant claims \$121.60 rent rebate for 6 months based on the alleged invalid notice. The landlord states the contractor hired is a resident caretaker and he performs janitorial duties in the complex. They said that there is no difference in their mind as he was employed, he was given the unit in question after some renovations and they provided a contract as evidence for the hearing. His duties involve about 12 hours of caretaking a week.

The tenant also alleges that he is owed one month's free rent or \$1179. The landlord provided a rent ledger showing he had received one month free. The tenant said the realtor had written them a note saying that the landlord would give as a gift two months free but he no longer has the note.

The tenant also claims \$2368 as a rent refund in compensation but he was unable to recall why he made this claim; he speculated that it was just in case the one month free rent did not apply.

Much of the tenant's claim and concern was related to the alleged breach of the two tenants' privacy and peaceful enjoyment by the landlord and the shareholders of the co-operative. He alleged the shareholders somehow obtained and discussed loudly his private medical records from 20 years ago and that these were somehow obtained from a private profiler, D.A., who is a close friend of one of the shareholders. He also said that they as tenants had suffered from threats for three years which seemed to relate to one shareholder, V.D., complaining about his co-tenant watching a movie about dogs. He also complained about overhearing another shareholder (G. T.) making remarks about "someone's privacy rights" and a "super-ceding presence" in 2010 and he knows these remarks were about him. He said further that another shareholder (A. B.) was the person who had obtained his medical records and she had vandalized a past president's vehicle. He also claims that their privacy was invaded by the landlord using thermal imaging equipment to record them in their unit and also by scanning his emails.

The landlord denied the tenant's allegations. The President said that she has examined all the corporations documents carefully and there are no documents relating to medical records of the tenant, no one including V.D. or A. B. would have access to them and

they do not know a profiler A.D. She noted there are no complaints about the tenants in the past management reports and these by past procedure would have been recorded by the management company and forwarded to the Board. She further notes that there have been no charges laid against A.B. for vandalism and no claims on her by ICBC. The Board Member, G.T., was a witness in the hearing and he said he does not recall making the alleged remarks and he does not even know what “a super-ceding presence” is.

The landlord further denies having thermal imaging equipment (say they do not know what it is or how used) and they have never tried to access the tenants’ emails although some hacker may have done it somehow.

The tenant said he has made complaints to the Privacy Commissioner and the Ministry of Health but they were content to await the outcome of today’s hearing.

Included with the evidence are statements of the tenant, a copy of the Notice to End Tenancy, copies of letters to various parties, a rental ledger, a caretaker’s contract and the landlord’s rebuttal statement.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

This is the tenant’s application and the onus is on the tenant to prove his claims on a balance of probabilities.

In respect to the validity of the Notice to End Tenancy and the tenant’s contention that the caretaker employed and living in the suite is actually a janitor, I find dictionary definitions found on the internet state that a janitor and caretaker are synonymous. For example:

janitor [ˈdʒænɪtə]

1. Scot, US, and Canadian the caretaker of a building, esp a school

Merriam Webster Dictionary: Synonyms

caretaker, guardian, custodian, keeper, warden, watchman

Therefore I find the Notice to End Tenancy was validly issued for the use of the caretaker. I find the contract and Schedule A support the landlord’s evidence that the

caretaker was hired and performs janitorial duties also. I find the Act does not specify for how many hours the caretaker must be employed so I find the tenant's contentions in this respect are not relevant. I dismiss this portion of the tenant's claim and his application for a rent refund.

In respect to the claim for one month free rent, I find the landlord's rental records confirm that the tenant received his free month rent plus his security deposit. He agreed he had no evidence available that a further gift was promised to him so I dismiss this portion of the tenant's claim. I also dismiss his claim for two months compensation as he could not provide any foundation for it in the hearing and provided no evidence relevant to it.

Regarding his claim that his privacy rights were invaded and his peaceful enjoyment compromised by actions of the landlord, the landlord has denied each and every allegation. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

While the tenant's rights may have been invaded and his peaceful enjoyment compromised, I find insufficient evidence to support his allegations. I find the evidence of the landlord credible that the current President has examined all the past records and finds no notes of complaints against the tenants and as these notes were made by third parties at the time, I find this supports the evidence by the landlord in the hearing that these complaints did not occur. I also find her evidence credible that she has questioned all persons named in the tenant's allegations and they all deny knowledge of the events or conversations recounted by the tenant. One other officer also provided credible evidence in the hearing that he does not even know the meaning of some term which the tenant alleged he used in connection to the tenant. The President further stated that no ICBC claim had been made against the A.B. who is accused by the tenant of vandalism nor had charges been laid. I also find the landlord's evidence credible that they do not own or have knowledge of imaging equipment and they have no knowledge of anyone gaining access to the tenant's emails. Therefore I dismiss this portion of the tenant's claim as there is insufficient evidence to satisfy the onus of proving on a balance of probabilities that the landlord has medical records belonging to him or that the landlord compromised his peaceful enjoyment or invaded his rights.

**Conclusion:**

The Application of the Tenant is dismissed in its entirety without leave to reapply. No filing fee is awarded.

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 08, 2013

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Residential Tenancy Branch

