



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, MT, O, RPP

### Introduction

This is an application to cancel a Notice to End Tenancy that was given for nonpayment of rent, an application to allow the tenant more time to make an application to cancel a Notice to End Tenancy, an application for a Monetary Order for \$25,000.00, and an application for the Order for return of tenant's personal property.

A substantial amount of documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

### Preliminary Matter

At the beginning of the hearing I dealt with the preliminary matter, as it appeared to me that the applicant had incorrectly named numerous parties as respondents.

The rental property is a separately owned unit in a larger Strata property. Three of the parties named on the application as respondents are not in a landlord-tenant relationship with the applicant.

One of the respondents is an owner of a separate unit in the strata property, one of the respondents is the Strata Management Company for the strata building, and one of the parties is the building supervisor of the strata building.

The Residential Tenancy Act can only deal with disputes between landlords and tenants, and therefore I have removed the above three respondents from any orders issued.

### Issue(s) to be Decided

The issues are whether or not to cancel a Notice to End Tenancy that was given for nonpayment of rent, whether or not the applicant established a monetary claim of \$25,000.00 against the respondent, and whether or not to Order landlord to return tenants property.

### Background and Evidence

The applicant testified that:

- When he rented the unit he was informed that there was a storage unit.
- He and the landlord attempted to find the storage unit as they were told it was unit number 16, however they found that that unit was being used and therefore the landlord put him in touch with the building manager of the strata unit.
- He spoke with the building manager in the building manager told him which unit to use.
- He put his belongings in the unit that had been assigned to him by the building manager, however it turned out to be the unit of another tenant living in a separately rented unit.
- His items were subsequently removed by the owner of that unit and have not been returned.
- As a result of this mix-up someone had stored drugs and weapons in the locker which resulted in us being put in protective custody by the RCMP, and the RCMP seizing my business capital.
- I have therefore been unable to make any income to pay the rent, and I'm also seeking \$25,000.00 compensation for my items that were taken out of the locker, that total \$13,000.00, \$5000.00 for lost income due to the missing inventory, \$3000.00 for lost time while in protective custody, and \$4000 for suffering threats to our lives.

In response to the tenants' testimony the landlord testified that:

- They did attempt to find the storage unit assigned to this rental unit and he does agree that when they found the unit number 16 it was being used.
- He also agrees with the tenants testimony that, he put the tenant in touch with the building manager to have a locker assign.

- He has been informed however by the building manager, that the building manager never assigned a locker to this tenant and that the tenant just put his items in the unit on his own.
- He has also been informed that the locker in which the tenant stored his belongings actually belonged to a friend of the applicant.
- He therefore fails to see how there is any liability on the part of the landlord with regards to the tenants alleged missing items.
- Further, the tenant has failed to pay the rent for both the months of August 2013, and September 2013 and has failed to comply with two notices to end tenancy that were served on the tenant.
- He is asking that the tenants application be dismissed and that an Order of Possession be issued.

Witness for the landlord testified that:

- He is the building manager for the strata property, and he did not assign the storage unit to the applicant, in which the applicant stored his items.
- When the applicant phoned him and asked him which storage unit was his, he informed him it was unit number 16, and in a later conversation he asked the tenant if he had found his storage unit, and the tenant said yes. He didn't say anything about having stored his items in a different unit, in this case number 14.
- Further the unit he stored them in, number 14, was the unit of a friend of his and he believes that that is most likely why the tenant stored his items in that unit.

In response to the witness's testimony the applicant testified that:

- Unit number 14, where he stored his items, was the unit of a friend of his; however he did not know that at the time that he put his items in that unit.
- Unit number 14 was the unit assigned to him by the strata property manager when he spoke to him on the phone.
- It was only a coincidence that the unit he put his belongings in, was actually the unit belonging to a rental unit being rented by his friend.

### Analysis

It's my finding that the applicant has not met the burden of proving that the landlord, or that the strata building manager ever assigned unit number 14 to him as a storage unit.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case, although the applicant claims that unit was assigned to him, it is just his word against that of the strata building manager and that is not sufficient to meet that burden of proof.

Further, it's my finding, on the balance of probabilities, that the applicant most likely put his belongings in that storage unit because he was friends with the person to whom the unit belonged. It seems somewhat far-fetched to me to believe that it's just coincidence that his belongings ended up in the unit occupied by his friend.

Therefore it's my finding that the landlord has no liability for the applicants alleged missing items and I will not be issuing any Orders against the landlord for those alleged missing items or any of the tenant's monetary claim.

Further, I will not be setting aside the Notice to End Tenancy because at this time there is still a substantial amount of rent outstanding.

### Conclusion

The tenant's application is dismissed in full without leave to reapply.

Upon application from the landlord I've issued an Order of Possession that is enforceable two days after service on the tenants.

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: October 01, 2013

---

Residential Tenancy Branch

