



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on August 19, 2013. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy started on August 1, 2012. The rent was \$915 per month payable on first day of each month. The tenant(s) paid a security deposit of \$500 prior to the start of the tenancy.

The tenants claim the sum of \$25,000 for the loss of personal belongings and the breach of the covenant of quiet enjoyment.

In late April the tenants gave the landlord written notice they were vacating the rental unit at the end of May. On May 1, 2013 they paid a portion of the rent leaving a balance of \$500 owing.

On May 10, 2013 the landlord packed the tenant personal belongings and delivered them to the tenant's place of work. The landlord did not have the tenants permission to enter the rental and was not acting according to the requirements of the Residential Tenancy Act. The tenants testified they were without a place to stay from 3:00 p.m. to 11:00 p.m. on that day. The police were called after talking to the police the tenants were permitted to return to the rental unit. They vacated the rental unit on May 31, 2013.

The tenants testified that an expensive woman watch and necklace have gone missing. The tenants produced a receipt showing the purchase of a necklace costing \$504 and an Cartier watch costing \$4956. They testified other items were lost but they did not have receipts for those losses. The tenants also seek compensation for loss of privacy alleging the landlord has entered the rental unit without permission on many occasions. and the landlord The landlord failed to pay their full rent when due for the month of May.

The representative of the landlord testified the landlord is ill suffering from a serious illness. She testified the landlord entered the rental unit only after posting a 24 hour Notice. The tenant failed to pay the rent and a balance of \$500 remained owing. The landlord denies the personal belongings were stolen. The landlord's representative testified the landlord's agent placed all of the belongings in garbage bags and delivered them to the tenant's place of work. She submitted the tenant should have purchased insurance to protect themselves from any losses.

### Analysis

After carefully considering all of the evidence I determined the landlord acted without lawful authority when she and or her agent entered into the tenant's rental unit, placed their belongings in garbage bags and delivered them to the tenants' place of work. The Residential Tenancy Act requires that the landlord obtain an Order for Possession, a Writ of Possession and hire a bailiff where the tenants' belongings are being removed. The tenants testified the watch and the necklace are missing. While this loss was not mentioned in the police report this is not surprising. I determined the landlord is liable to the tenants for the loss of the watch and the necklace. The quantum of the loss has been proven through receipts. I determined the tenants have established a claim against the landlord in the sum of \$504 for the loss of the necklace and \$4956 for the loss of the Cartier watch.

The balance of the tenants claim in the sum of approximately \$20,000 is for breach of the covenant of quiet enjoyment and loss of privacy.

Policy Guideline 6 includes the following:

"Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to **balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises**, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or was persistent threatening or intimidating behaviour. A tenant may file a claim for

damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy."

The landlord breached the Residential Tenancy Act by when she or her agents illegally entering into the tenants' rental unit and removed their belongings without lawful authority. The tenants are entitled to compensation for the breach of the covenant of quiet enjoyment. However the tenants failed to prove the conduct of the landlord was continuous or extensive. Further, the tenants failed to present proof to establish they are entitled to the amounts claimed. In the circumstance I determined the tenants are entitled to compensation in the sum of \$250 for the loss of privacy and breach of the covenant of quiet enjoyment. .

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$5710 plus the sum of \$100 in respect of the filing fee for a total of \$5810.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 11, 2013

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Residential Tenancy Branch

