



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, MNR, FF

### Introduction

In the first application the tenant seeks a monetary award for damages suffered and expenses incurred as a result of his alleged illegal eviction from the rental unit. Additionally he seeks to recover the \$50.00 remainder of his security deposit.

In the second application the landlord seeks to recover damages for the physical injuries his wife suffered as the result of an alleged physical assault by the tenant. At hearing it was my decision that the landlord's claim, in reality his wife's claim, is not a matter that is particularly related to a tenancy agreement or the rental property and must be heard in a court of law.

### Issue(s) to be Decided

Does the relevant evidence show on a balance of probabilities that the tenant was wrongfully evicted and is entitled to damages? If so, what is the proper measure of damages? Is he entitled to recover the balance of his security deposit?

### Background and Evidence

It appears that the landlord rents a two bedroom apartment from another and sublets one of the bedrooms to the tenant, sharing the kitchen, bathroom and perhaps the living room with him. The tenant's tenancy started in November 2012. The monthly rent was \$370.00. The landlord received a \$185.00 security deposit. The landlord has returned \$135.00 of it.

The tenant says that the landlord's son Mr. R. F. punched him and that the landlord cut off his power and changed the lock on his door on September 3rd forcing him to move. He vacated on September 3<sup>rd</sup> with the help of a professional mover. He had no place to

go and stayed at temporary lodging. He says his belongings are in storage. He produced receipts for and seeks payment of the moving and the storage costs as well as Canada Post charges for a change of address, a temporary mailbox and some lodging expenses.

The landlord's son Mr. R.F. tells a very different story. He describes his personal knowledge of bizarre behaviour by the tenant in mid-August; throwing a wrench at a cat and then pushing his mother, the landlord's wife. The police were called and he says they mediated an agreement whereby the tenant would leave at the end of August.

He says that later in the month the tenant left for a day and night with his room locked and his computer blaring loud pornographic sounds into the common area. He says that to shut down the noise the landlord threw an electrical breaker off and then on again. That was the extent of any power outage. He says that lock to the rental unit was only changed once the tenant had confirmed he had left.

### Analysis

The tenant left with having received an official Notice to End Tenancy. Unless the parties have a written agreement to end the tenancy, giving of a Notice is mandatory under the *Residential Tenancy Act*. A tenant who has not been given such a Notice is entitled to maintain his right to possession of his premises.

In the absence of such a notice the onus is on the tenant to show that he vacated the premises other than voluntarily. He must present convincing evidence that the landlord wrongly evicted him. In this case, on the competing evidence, there is no fact or thing which would give me reason to prefer the tenant's version of the culminating events over the version given by Mr. R.F. As a result, the tenant has not satisfied the evidentiary burden on him and his application for damages arising from a wrongful or illegal eviction must be dismissed.

The tenant is entitled to recover the \$50.00 remainder of his security deposit. The landlord has neither the tenant's written authorization to keep it or an arbitrator's order permitting him to keep it. Further, the landlord failed to repay the deposit or make application to keep it within the fifteen day period set out in s.38 of the *Residential Tenancy Act* and as a result, the tenant is entitled to a doubling of that security deposit remainder to \$100.00. By operation of Residential Tenancy Policy Guideline 17 "Security Deposit and Set off" [sic] I am to award the doubling even when not specifically asked for in the tenant's application.

Conclusion

The landlord's application is dismissed without prejudice to him (or his wife) making application to a court of law.

The tenant's application is dismissed but for his claim for recovery of the remainder of his security deposit. As the tenant has been partially successful I award him recovery of the \$50.00 filing fee for his application. The tenant will have a monetary order against the landlord for the amount of \$150.00.

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: January 17, 2014

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Residential Tenancy Branch

