



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vanac Development Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OLC, RPP, LRE, OPT, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement; for an Order for the landlord to return the tenants personal property; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; to obtain an Order of Possession of the rental unit; and to recover the filing fee from the landlord for the cost of this application.

This hearing was adjourned on three occasions and an interim decision was issued to the parties on September 05, 2013. The hearing was reconvened again today. The tenant and landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The tenant has appointed an advocate to assist him and the landlord has appointed Legal Council to assist them. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the tenant withdrew his application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, to return the tenant's

personal property and for an Order to suspend or set conditions on the landlord's right to enter the rental unit.

### Preliminary Issues

At the reconvened hearing held on December 27, 2013. The tenant appeared and stated that he was at his advocate's office but could not access his documents and his advocate was not available. The tenant requested to adjourn the hearing. I considered this request but as the hearing was reconvened to allow the landlord to present final evidence and a closing statement then I allowed the hearing to continue as I believe as the tenant had already presented his evidence and his witnesses had given testimony that it would not prejudice the tenant to not have his advocate present or to have his documents available. Council for the landlord at that time agreed they had no further evidence and would just be presenting a closing statement. Both parties were permitted to present a closing statement and no further arguments were considered

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order of Possession of the rental unit?

### Background and Evidence

The parties agree that this tenancy started in August 2011. Rent for this unit was \$850.00 per month and was due to increase to \$887.00 per month on September 01, 2013.

The tenant testifies that he was residing in the unit with another tenant. On the night of either July 30, or July 31, 2013 the other tenant was moving from the unit and the

landlord changed the locks to the unit without notice to the tenant. This prevented the tenant accessing his belongings. The manager refused to talk to the tenant and there was a card left on the tenant's door with a number for him to contact a person acting for the landlord from an eviction company (SM). The tenant testifies that he called SM but received no reply. The tenant then called the police to try to get access to his clothes, documents and medication. The tenant testifies that access was still refused.

The tenant testifies that this unit was his primary residence. The tenant agrees that he also had a studio in Gas Town where he went to work. If he was painting late at night he would stay in the studio. The tenant testifies that he always paid his share of the rent for this rental unit and the utility bills remain in the tenant's name. The tenant testifies that he has a bail order against him and cannot change his address or phone number without notifying the Bail Officer; if the tenant did so he could be arrested.

The tenant testifies that the landlord's agent MS who was the building manager said that the tenant was illegally subletting the unit and had not lived there for 18 months and was not to access the unit however the tenant testifies that this is not true. The tenant's father also came to speak to MS but MS still refused to let the tenant into his unit. The tenant testifies that the Police had been told that the tenant was not the tenant and the unit and possessions had been abandoned by the other tenant. Again the tenant testifies that this was also untrue. The belongings in the unit belonged to the tenant and not his roommate.

The tenant testifies that he continued to call SM from the eviction company but as he had no response he filed his application with the Residential Tenancy Branch and then served the landlord's agent with Notice of this hearing. The tenant testifies that he was advised by the Residential Tenancy Branch to hire a locksmith to get into his unit. However by this time August 01, 2013 the landlord had prevented the tenant's access into the building. The tenant testifies that SM turned up dressed as a Bailiff and spoke to the police and landlord. SM then told the tenant that SM had been told that he was not the tenant. The tenant testifies that he informed SM that all his belongings were in the

unit and SM seemed to be surprised. SM informed the tenant that SM would call the tenant in the morning as he would remove and store the tenant's belongings. SM suggested that the tenant arrange a group of movers to clear the unit.

The tenant testifies that he was relieved at that point that there was not going to be seizure of his belongings. However the next day SM did not call the tenant nor did SM return the tenant's calls. The tenant testifies that he returned to his unit on the following Saturday with the Police and was told that all his possessions had been removed. The tenant testifies that the landlord had no Orders to do this and no Notice to End Tenancy was given to the tenant for the tenant to dispute.

The tenant testifies that SM is not a registered bailiff and SM illegally removed the tenant's belongings. The tenant testifies that later SM informed the tenant that the tenant would not have to pay for the storage fees and SM did not grant the tenant access to his belongings until August 16, 2013. At that time the tenant went to the storage locker with the landlord. He looked in but then closed and locked it again as the tenant did not want his claim for damages to be impeded if the tenant touched anything.

The tenant testifies that his rent was \$865.00 per month and now the landlord has rented the unit for \$1,300.00 per month. The tenant testifies that he cannot afford to pay that much in rent. Due to this the tenant testifies that he cannot have his teenage son come to live with him as all he can afford is a bachelor suite.

The tenant testifies that Legal Council for the landlord tried to settle the matter by offering the tenant compensation of \$200.00 for his filing costs and storage costs. The tenant testifies that he did not sign anything and due to this offer it shows the landlord is admitting to wrong doing. The tenant refers to his evidence showing utilities were in the tenants name and rent receipts showing rent had been paid

Council for the landlord states that the landlord admits to nothing and the settlement discussions were made without prejudice.

Council for the landlord states that the rental unit has already been rented to another tenant so this tenant cannot have possession of the rental unit. There may be an empty unit in the building but the rent would be more like \$1,300.00. The tenant's unit re-rented for \$925.00 not \$1,300.00 as suggested by the tenant.

SM testifies that he would like to address the allegations made against him by the tenant. SM testifies that he is a licensed Bailiff and his duties are broad. On the day he attended at the tenant's building he was wearing his Bailiffs jacket after attending to another matter. SM testifies that from the outset he was in attendance on an advisor role only. The landlord had contacted SM about the female tenant and SM was going to serve that tenant with a Notice to End Tenancy when he received a call from the landlord saying the female tenant had given notice herself and was leaving the unit. This male tenant OE was referred to by the building manager as the former tenant. SM testifies that when they went in to inspect the unit after the female tenant had moved out they saw a few things left there such as books and furniture. However, there were no clothes, food, toiletries, medication, bedding or other male personal items. SM testifies that he advised the building manager that anything that was left in the unit after the female tenant had vacated could be treated as abandoned and then removed from the unit and stored for 60 days.

SM testifies that when he was in attendance at the building he spoke to the tenant and was advised that the tenant had medication in the unit. SM asked the tenant where it was and offered to go into the unit to collect it. However, the tenant did not want SM to do this. SM testifies that he again looked in the unit but saw no personal items there. There was still old furniture and boxes but no bed, bedding or clothes. SM testifies that he viewed this on the basis of the female tenant having vacated the unit. SM testifies that the next day the tenant told SM that the stuff in the unit was his. However, the building manager had told SM that this tenant had not been seen in the building for several months and the police confirmed that OE had a residence in Gas Town.

SM testifies that he had spoken to other tenants who all said that they had not seen the tenant there for several months.

Council for the landlord asks SM to clarify the tenant's remarks about the tenant not being allowed access to his belongings until August 16, 2013. SM responds that this is untrue the tenant was told his stuff was in storage on August 01, 2013. The tenant has never been refused access to his belongings and the tenant has not mitigated his loss by picking up his belongings.

The tenant cross examines SM and asks if SM had looked in the freezer for the tenant's medication. SM responds that when they were standing outside the unit he asked the tenant where his medication was and SM would go and get it but the tenant did not want SM to go into the unit. The tenant asks SM about his testimony and says it is all word of mouth. Does SM have any evidence regarding what the landlord told him to do? SM responds that he was not asked to do anything he was there in an advisor role only. The tenant testifies that he agrees that SM said he could access his belongings but when the tenant went to the storage place they would not let him get to his belongings without clearance. SM responds that the tenant's belongings were never seized and SM did not instruct the moving and storage company. SM testifies that he only instructed the landlord to remove the female tenant's belongings and instructed the landlord to return any other belongings to this tenant. The tenant asks SM if he carries out all orders that the landlord asks him to do. SM responds that he only does things that are legal and if a client asks for instruction then he provides that. SM testifies that the landlord told SM that OE was not a tenant. He knew he was a previous tenant but had been informed he was no longer a tenant.

SM testifies that he was given instruction from a man in the landlord's office and interviewed the building manger who gave SM a history of this unit. SM testifies that he had to determine who the tenant was and in his opinion, from the information given to him, it was the female tenant.

The landlord agent MS who is the building manager testifies that she called the police regarding the tenant after the tenant attempted to get into MS's unit

The tenant testifies that that the female tenant was only his roommate for two months. They never got along because she was so messy and the tenant testifies that he was kicking her out of the unit.

Council for the landlord cross examines the tenant and asks if the tenant moved in to the unit in August, 2011 with his son and the tenant's girlfriend. Council for the landlord also asks if this is a one bedroom unit. The tenant responds that yes he did move in with his son and his girlfriend. His son slept on a cot behind a screen because it is a one bedroom unit. The tenant testifies that his son moved out around May, 2012. Council for the landlord asks the tenant if one of the tenant's documents provided in evidence is a letter from the Ministry of Children and Families dated March 08, 2012 in which the tenant has said he can no longer handle his son's behaviour. His son is going to stay at his grandfathers and then flew back to his mothers the next day. The tenant responds that his son could have left in March, 2012 and his girlfriend moved out in February, 2012. Council for the landlord asks the tenant if another person moved in. The tenant responds that a friend moved in but she was not the tenant's girlfriend. She had the bedroom and the tenant slept on the cot in the living room. This roommate lived there from February, 2012 to January, 2013. Council asks the tenant if he spent every night in the unit. The tenant responds that sometimes he spent the night at a girlfriend's home and some times in his studio if he was painting all night. Sometimes he visited family. When this roommate was living there she was hospitalized and at that time the tenant stayed in the unit every night. The tenant testifies that this was his home but sometimes he went away to work.

The tenant testifies that he was deprived of having his son come and stay for the summer because the landlord wrongfully evicted the tenant from his home. The tenant seeks compensation for this. The tenant seeks further compensation for a loss of housing as he now has to stay in his small studio unit without a bathroom or proper

kitchen; compensation for a loss of dignity; compensation for damage to the tenant's property and for having no access to his belongings until August 16, 2013. The tenant seeks compensation for mental anguish, pain, suffering and stress resulting in the tenant having to withdraw from school, and compensation for moving and storage costs. The tenant seeks \$25,000.00 in compensation.

The tenant calls his witness PW. This witness is a friend of the tenants. The witness testifies that the tenant was still living in the unit and he had visited the tenant there about two months before the tenant was evicted. The tenant's belongings were all in the unit.

Council for the landlord cross examines the witness and asks if the witness has known the tenant for a long time and what was the occasion that he last visited the tenant, was there a woman living there and did any furnishings belong to that woman. The witness responds that he was just visiting the tenant and was in the unit for around two or three hours. Someone else was visiting at the same time. The witness does not recall if a woman was living there but there was a furnished bedroom and there was a woman there earlier on in the evening. The witness testifies that he had been there on another occasion early this year with a group of friends socializing and he had visited the tenant four or five different times at the unit. Council for the landlord asks the witness if the witness had visited the tenant at his studio and if so how many times in the past few years prior to July, 2013. The witness responds that he has also visited the tenant at his studio maybe two or three times and as he lives close to the studio he has visited there more regularly.

The tenant asks his witness when the witness first started to visit the tenant and how many times did the tenant go to the witnesses home. The witness responds he first started to visit six months to a year before and the tenant has visited the witness four or five times at his home. The tenant asks the witness if they hang out socially. The witness responds yes they meet at the pub and visit each other. The tenant asks the witness to describe what the tenant does in the studio. The witness responds that he



paints and plays music and has groups over. There is a sink and a hotplate and a separate toilet in the building. The tenant asks the witness if the witness thinks the studio is appropriate to have a child come and stay. The witness responds no.

Council for the landlord cross examines the tenant and asks the tenant to describe how often the tenant slept at the unit. The tenant responds that he was there more than 50 percent of the time. When his roommate was hospitalized he did stay in the unit more as her father was staying there while he visited from Australia. The tenant testifies that he had the bedroom at that time and his roommate's father had the cot and contributed towards the rent. The tenant testifies that he does not remember who made the money orders out for the rent but the tenant contributed towards the rent and paid the bills.

Council for the landlord asks the tenant if his roommate moved out at the end of January, 2013 and then another roommate moved in. The tenant responds yes in January or February and the tenant testifies that he continued to contribute towards the rent and bills. The new roommate then had the bedroom and the tenant had the cot. Council for the landlord asks the tenant if another roommate moved in around May when the second roommate moved out. The tenant responds yes but he is not sure of the dates. The tenant testifies that he continued to contribute towards the rent. The tenant testifies that he did not get along with this roommate so was at the unit whenever she was not there.

Council for the landlord asks the tenant how long the tenant has had the studio. The tenant responds that he got it sometime after his first girlfriend moved out in the Spring of 2012. The tenant testifies that he had a hammock there at first then a couch and later the tenant moved his bed into the studio as he had nowhere else to put it as his roommate had the bedroom. Council for the landlord asks the tenant about the telephone bills presented in evidence. Council for the landlord asks the tenant what number is indicated on the bills. The tenant testifies that it is the number for his previous apartment and now he does not have a landline as he cancelled the service when money got tight. Council for the landlord states that the phone bills show different

numbers and asks the tenant if these numbers are associated to the studio and not the unit. The tenant responds that he has internet service to both the studio and the unit.

Council for the landlord questions the tenant about the rent paid as the receipts provided by the tenant in evidence show different amounts. The tenant responds that when he moved in he thinks rent was \$850.00 sometimes he overpaid rent so it would then be corrected the next month. Council for the landlord asks the tenant about the four receipts provided showing different amounts but do not correspond to the amount of rent paid. The tenant responds that these were the receipts for the unit and rent on the studio was \$760.00. Council for the landlord suggests that these receipts do not proof that rent was paid by the tenant for the unit. The tenant responds that the studio rent was \$850.00 or \$840 but it went down to \$787.00 he had overpaid it so then the following month he paid \$632.00.

Council for the landlord refers the tenant to the testimony of SM in which SM said he had inspected the unit on August 01, 2013 and that there was no men's clothing, toiletries or medication in the freezer. The tenant responds that there was medication in the freezer and a lock box, there where clothes in the closets and in boxes. The tenant testifies that SM is not being truthful as they have since removed 40 boxes of personal belongings from storage. Council for the landlord asks the tenant about his testimony in which he stated that he was deprived access to his medication. The tenant responds that SM did offer to go and get it but the tenant would have had to search for it and did not want SM searching through his belongings.

The tenant calls his witness JH. The witness testifies that she had dated the tenant for a while but moved into the unit as a roommate after they had broken up. This was March 2012 to February 2013. The tenant was the primary tenant and the bills were mostly in the tenant's name although the witness did co-sign on the Hydro account. Everything was shared equally and they paid rent in cash at first and then by money order. The tenant had lived there for two years and the witness visited the tenant before and after she lived there. The unit was furnished with the tenant's own things. The witness

testifies that she remembers rent going up to \$850.00. The witness testifies that her father came and stayed in the summer of 2012 and then came back again in the fall and stayed for about a month while the witness was in hospital. During this time they both continued to pay the rent and the witness's father helped with rent. The tenant kept his medication in the freezer and took care of his plants. The witness testifies that the tenant spent the majority of the week in the unit and slept on a cot in the living room or the couch. The witness testifies that she occasionally paid all the rent as the tenant would then also let her have use of the studio.

Council for the landlord cross examines the witness and asks if the witness would agree that rent was \$820 and went up to \$855.00, how often did the witness pay all the rent and have use of the studio and how long was the witness in hospital for. The witness responds that she agrees rent went up to \$855.00, she may be paid all the rent for two or three months and then had use of the studio and was in hospital from November or December 2012 to January 2013. At that time the witness testifies that her Dad came and stayed in the unit and paid half of the rent. Council for the landlord asks the witness where the tenant kept his medication. The witness responds some in the freezer and some elsewhere. The tenant kept his toiletries in the bathroom and his clothes were in a closet and in boxes and drawers. The witness testifies that sometimes the tenant worked late and would stay at his studio. Council for the landlord asks the witness when she last visited the tenant. The witness responds that she does not recall but she did go for dinner and the new roommate was out.

The tenant calls his witness DP. The witness testifies that she dated the tenant for a while and was often at his unit the tenant helped the witness go through some personal times and on one occasion the police came to speak to the witness at the tenant's unit which irritated the building manager. After that incident the building manager sent her son to speak to the tenant and this person threatened the tenant. The building manager was hostile towards the tenant and was bullying and harassing. The witness testifies that the unit was furnished with the tenant's belongings and the witness was last at the unit sometime in January, 2011.

The tenant calls his witness RW who is the tenant's father. The witness testifies that he was present at the events on July 31 to August 3 or 4, 2013. They had arrived at the unit to find the locks had been changed, the manager would not talk to the tenant and they found a card with the name of a man from an eviction service on it. The female tenant was allowed into the building to get her stuff out of the unit but the tenant was not allowed in. The tenant called the police and the manager said the tenant had not been around for 18 months. The witness testifies that this was untrue all the tenant's belongings were in the unit. When they returned the next day after filing an application with RTB the tenant found the locks to the building had also been changed. The manager then called the police and when they came the manager told the police that the tenant was not the tenant for that unit and the unit had been abandoned. SM showed up and he was served the hearing documents. SM told them that the landlord had said he was not the tenant but had been subletting the unit without permission. The tenant tried to get his medication and documents but was not allowed into the unit. The tenant was told there was no medication or documents in the unit. SM told them that if they could get it together they could get in and move the tenants stuff out however when they returned the following Monday to do this all the tenant's belongings had been removed. The witness testifies that he later moved over 30 boxes and furniture from the storage unit containing clothing and the tenant's items. Some items of furniture were damaged such as a dresser. The witness testifies that sometimes he would get a money order for the rent for the tenants' and it was his son who gave the witness this money.

Council for the landlord cross examines the witness and asks if they spoke to the building manager on July 31, 2013. The witness responds that they were denied access without any explanation. When they came back the next day the witness agrees he may have shouted at the building manager. Council for the landlord asks the witness if SM offered to get the medication. The witness testifies that he was last at the unit within weeks of July 31, 2013 he does not recall the last time he was asked by the tenant to get a money order for the rent but believes it may have been within the last six months.

### **Closing statement of Council for the landlord**

The landlord was of the position that the tenant had vacated the unit prior to July 31, 2013 or had abandoned or sublet the unit. The landlord's belief in this matter was genuine. The testimony presented by the landlord's agent SM backs this up when he testified that there were no personal male items in the unit such as bedding, toiletries, clothing or medication. The tenant has provided no evidence to show any out of pocket expenses and if it is proven that the landlord was wrong then any monetary award should be punitive in nature measured against the wronged persons suffering. The tenant's evidence shows that the degree of suffering was not great and therefore should the landlord be found in the wrong the amount awarded should be minimal. The landlord paid the storage costs for the tenant's belongings for three months as a gesture of good faith.

### **The tenants closing statement**

The tenant states that he has incurred an additional months storage cost of \$160.00 and the storage costs and moving costs are difficult to quantify. The tenant states he has also just received his mail from the landlord with other bills connected to the unit. The damage to the furniture is now being assessed as the tenant did not have access to the storage until August 16, 2013. The tenant asks for punitive damages as he was locked into an affordable rent and other units are unaffordable. Due to this the tenant was not able to have access to his son for the summer or winter as the tenant is residing now in his studio unit which is unsuitable. This studio unit is zoned M2 which means the tenant can only use ten percent of the space for living purposes. The tenant states that there were 40 boxes of personal belongings removed from the unit including clothing, toiletries, medication and bedding. The tenant states he has never had sight of an inventory made by the landlord of his belongings and until recently he had nowhere to put his belongings so they had to stay in storage until two weeks ago.

### **Analysis**

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regards to the tenants claim for compensation for the loss of dignity, mental anguish, pain and suffering; I refer the parties to the Residential Tenancy Policy Guidelines # 16 which discusses monetary claims relating to the tenant's claim and states, in part, that the Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the *Act*. Damages is money awarded to a party who has suffered a loss which the law recognizes. Claims may be brought in Tort and/or Breach of Contract.

An Arbitrator may only award damages as permitted by the Legislation or the Common Law. An Arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an Arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the

time they entered into the contract that the breach complained of would cause the distress claimed.

- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.

With regard to the tenant's claim that he was wrongfully evicted; I find the landlord determined that the tenant was no longer a tenant of the rental unit without discussion with the tenant or any written notice to the tenant asking for clarification of his continuing tenancy. It is my decision that the landlord's building manager made the assumption that the tenant had abandoned the unit or had sublet the unit on the basis that the tenant had not been seen in the building for a few months. However an assumption is not based on fact and the landlord did not take necessary steps to determine that the tenant was no longer residing in the unit. I am satisfied from the evidence presented that the tenant was still in residence at the unit and that the tenant's belongings were contained within the unit. Consequently, I uphold the tenant's claim that the landlord wrongfully evicted the tenant without cause or proper Notice.

With this in mind the tenant has applied for an Order of Possession of the rental unit. However, as the landlord has since re-rented the unit to new tenants I am unable to issue an Order of Possession to the tenant. Consequently, it is my decision that the tenant is entitled to some compensation from the landlord for the loss of his rental unit through wrongful eviction. While in normal circumstances I would determine the amount of monetary compensation due to the tenant by calculating any additional amounts the tenant has to pay to re-rent alternative comparable accommodation. In this case the tenant has not rented a new rental unit but is residing in his studio at the same or a lesser rent than the rental unit. However, this studio does not have comparative facilities such as a bathroom or proper kitchen and is a one room studio without a separate bedroom. The tenant has testified that he cannot find alternative accommodation in the

area for similar rent and is unable to afford a higher rent. Council for the landlord stated that other vacant units in the landlord's building were approximately \$1,300.00 per month. Consequently, I determine that the tenant is entitled to a monetary award to the amount of **\$4,500.00** in aggravated damages.

The tenant has applied for further compensation for not being able to have his son visit the tenant due to the tenant's living conditions in a studio without bathroom or sufficient kitchen facilities. The tenant has not shown what arrangements he had with his son, his son's mother or any other caregivers for access to his son for periods in 2013.

Consequently, due to insufficient evidence that there is an ongoing arrangement for access to his son I am not prepared to award compensation for a loss of access for undetermined periods and this section of the tenants claim is dismissed.

I find that the landlord acted in an indifferent and wilful way when considering the eviction of this tenant. Even when the tenant was at the unit on the day the tenant's roommate was moving out I find the tenant explained to the landlord's agents that he was still living there and his belongings were still in the unit. However, the landlord still continued with the eviction and removal of the tenant's belongings. I am satisfied therefore that the tenant experienced a loss of dignity in confronting the landlord's agents and police in a public situation at the building. I am further satisfied that the tenant suffered some mental anguish and suffering in suddenly being made homeless and having his belongings removed and placed into storage. The tenant has testified that his belongings also contained personal documents and medication; however, the tenant did not elaborate on what his medication was for or any resulting health issues in not having his medication for 16 days. It is however my decision that the tenant has established a claim for compensation for aggravated damage. The tenant has claimed a total amount of \$25,000.00. However, the tenant has not broken this claim down into a dollar amount for each section of his claim. I therefore have taken into consideration the severity of the damage caused to the tenants well being and find an award of **\$1,500.00** will be made in recognition of the tenant's claim in this section.



With regard to the tenant's claim for compensation for having to withdraw from school due to the stress experienced from losing his home; I have considered this section of the tenant's claim and find there is insufficient evidence to show that the landlord can be held responsible for the tenant's actions in withdrawing from his schooling. The tenant did move into his studio unit and could have continued with his schooling from there if the tenant placed such an importance on his education. I am not prepared to award any further compensation for stress as this has been dealt with in the above monetary award.

With regard to the tenant's claim for compensation for damage to his belongings; the tenant testifies that he has not yet determined what damage has been made, if any, to his belongings as he has not yet inspected them prior to this hearing. When filing a claim for compensation of this nature a tenant must come to the hearing fully prepared to present evidence to support all aspects of their claim. Therefore, due to insufficient evidence I will not consider the tenant's claim for damage to his belongings and this section of the tenant's claim is dismissed.

With regard to the tenant's claim for compensation for not being able to access his belongings until August 16, 2013; the landlord's agent gave evidence to show that the tenant was able to gain access to his belongings from August 01, 2013. However, the tenant has disputed this and testified that he was not given permission to access his belongings until August 16, 2013. The tenant also testified that he had to leave his belongings in storage until two weeks before the original hearing as he had nowhere to put his belongings due to the wrongfully eviction from his rental unit. As neither party has provided sufficient evidence to show when the tenant was first able to gain access to his belongings it becomes one persons word against that of the other and therefore the tenant has not met the burden of proof that he was not able to access his belongings until August 16, 2013.

Subsequently, no compensation will be awarded to the tenant for not being able to access his belongings for 16 days. The tenant has testified that he had to pay one month's storage costs as the landlord had paid for the storage for three months. The

tenant also seeks to recover moving costs. I am not satisfied however that the tenant has done everything to mitigate his loss in this matter by attempting to find somewhere else in which to put his belongings. Furthermore, the tenant has provided insufficient evidence of any costs incurred when he did eventually remove his belongings from storage. Therefore, it is my decision that the tenant has failed to meet the burden of proof in this matter and failed to mitigate any loss pursuant to s. 7(2) of the *Act*. The tenant's claim for compensation in this matter is dismissed.

As the tenant has been partially successful with this claim I find the tenant is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$6,050.00** pursuant to s. 67 and s. 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

The reminder of the tenants claim is dismissed without leave to reapply.

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 02, 2014

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Residential Tenancy Branch

