



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF  
CNC, MNDC, ERP, LRE, FF, O

### Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order suspending or setting conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The parties each gave affirmed testimony and provided evidentiary material to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the parties advised that the tenant has moved out of the rental unit, and therefore, the tenant's applications for an order cancelling a notice to end tenancy for cause; for an order that the landlord make emergency repairs for health or safety reasons; and for an order suspending or setting conditions on the landlord's right to enter the rental unit are all hereby dismissed.

### Issue(s) to be Decided

The issues remaining to be decided are:

Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of 2 bookcases taken by the tenant at the end of the tenancy?

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for moving expenses, return of the security deposit and damages for pain and suffering and loss of quiet enjoyment?

### Background and Evidence

The tenant testified that this fixed term tenancy began on October 29, 2013 and ended on January 29, 2014, but was supposed to expire at the end of one year. Rent in the amount of \$750.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On October 12, 2013 the tenant paid a security deposit in the amount of \$400.00 which is still held in trust by the landlord. On March 7, 2014 the tenant provided the landlord with a forwarding address in writing by personally handing it to the landlord.

The tenant testified that the landlord had told the tenant that she had to move out so that the landlord's family member could move in. The tenant advised the landlord that notice was required but the tenant would start to look for a new place. Then the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, and has provided a copy for this hearing. The notice is dated January 16, 2014 and contains an expected date of vacancy of February 28, 2014. The reason for issuing the notice is: "Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement."

If the landlord hadn't caused the tenant to move out prior to the end of the fixed term, the tenant would not have to pay for laundry or pay for a post office address change. Further, the tenant paid 3 friends and another person \$100.00 each to help with the move and \$100.00 for the U-Haul. No receipts have been provided.

The tenant also testified that during the tenancy, the landlord had a pool table in the rental unit and the landlord's kids would knock and then enter and play pool. The tenant was okay with that, but they weren't supposed to enter when the tenant wasn't home. Things like chocolates went missing and things were moved. Either the landlord or the landlord's children entered lots of times when the tenant wasn't home, but the tenant does not recall if she ever spoke to the landlord about it.

Further, the landlord shuts down the internet at 7:30 or 8:30 p.m. When the landlord was going away, he shut down the internet and cable for 5 days and both are included in the rent.

The tenant has provided a monetary order worksheet setting out the amounts claimed as follows:

- \$400.00 Damage Deposit
- \$75.00 for cleaning the rental unit
- \$550.00 for no laundry facilities at the new rental unit to the end of the fixed term for this tenancy
- \$200.00 for gas travelling to view other rental units; 2 receipts for gasoline have been provided for \$40.00 each on December 31, 2013 and January 23, 2014
- \$75.00 for changing the tenant's address with Canada Post
- \$500.00 for 4 people to help move and rental of the U-Haul
- \$1,000.00 for pain and suffering from stress; that the tenant suffers from severe chronic pain; the landlord's dog barked continuously from being caged 24 hours per day.

Also provided is a letter from the landlord to the tenant dated January 13, 2014 stating that the tenant moved in on October 12, 2013, and requests payment of the security deposit.

The tenant has also provided copious amounts of handwriting including a letter dated January 18, 2014 from the tenant to the landlord which describes that the parties discussed moving in slowly starting October 12, 2013 but the landlord kept the keys to the rental unit and designated a few hours per day to move things in. The tenant finally was allowed to move in October 29, 2013. Also included is a letter from the tenant to the landlord dated January 22, 2014 which also states that the tenant moved in on October 29, 2013.

The tenant took 2 bookcases when she moved out of the rental unit and testified that the landlord told her she could take them. They were made by the previous owner of the rental unit, and are not worth the amount claimed by the landlord.

The landlord testified that the tenant did not ever pay the security deposit. Further, the tenant refused to sign the tenancy agreement, but made one up and the landlord refused to sign. The one the tenant made stated no security deposit was payable. At the commencement of the tenancy, the tenant paid the equivalent of half a month's rent, so the landlord allowed the tenant to move in. The tenant paid \$400.00 which covered rent for October 12 to 31, 2013. Rent was \$750.00 per month because the landlord

agreed to reduce it by \$50.00 per month from the \$800.00 rental amount because laundry was not included.

The landlord further testified that his friend knew someone who needed a place to rent and the parties talked about it but the landlord did not evict the tenant for another person to move in.

The landlord has provided a copy of a letter from the tenant dated October 8, 2013 stating that the tenant would like to start moving in possessions on October 12, 2013 and would like to permanently live in the rental unit on October 29, 2013 for the rental amount of \$750.00. Also provided is a letter from the landlord dated January 13, 2014 requesting the security deposit of half a month's rent, and stating that the move-in date was October 12, 2013.

Copies of rental receipts have also been provided for November, December and January rent showing that \$50.00 for not having laundry has been credited and the full amount of rent was \$750.00 for each of those months. No receipt for the \$400.00 payment made in October has been provided.

The landlord also testified that the cable was not shut off at all, and the internet wasn't working for about a week because the router needed replacing.

The landlord claims \$300.00 from the tenant and stated that the tenant was offered to purchase two bookcases for that amount but the tenant took them from the rental unit at the end of the tenancy and did not pay the landlord. The landlord's Monetary Order Worksheet states that similar bookshelves are about \$249.00 each at Ikea.

Both parties have provided a copy of page 3 of the tenancy agreement written by the tenant which shows, "Oct 15 – Oct 31/2013 gave \$400.00 cash so that I can move my things early." It also shows that \$0.00 are payable for a security deposit or pet damage deposit.

### Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists because of the other party's failure to comply with the tenancy agreement or the *Residential Tenancy Act*,
3. The amount of such damage or loss; and

4. What the claiming party did to mitigate, or reduce such damage or loss.

Firstly, I find that there is no written tenancy agreement that has been signed by either party. Both parties claim to have made one and the other refused to sign. The *Residential Tenancy Act* states that a tenancy agreement exists even if it is not in writing. I find, from the testimony of the parties that rent was \$750.00 per month. The tenant claims that it was a fixed term tenancy and therefore the landlord should pay the \$50.00 per month for laundry to the end of the fixed term. I do not accept that the tenancy was for a fixed term because no one signed a tenancy agreement to indicate the start or end date of the fixed term.

The tenant claims moving expenses from the landlord for the landlord requiring the tenant to move out of the rental unit. A landlord is required to pay a tenant the sum equal to one month's rent if the landlord serves the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. In this case, the landlord may have talked about re-renting the unit to someone else or moving a close family member into the rental unit, and the tenant started looking for a new place. The landlord did not serve a 2 Month Notice to End Tenancy for Landlord's Use of Property, but served a 1 Month Notice to End Tenancy for Cause because the landlord claims the tenant didn't ever pay the security deposit. The tenant is not entitled to compensation for a tenancy that ends with a 1 Month Notice. I find that the tenant is not entitled to moving expenses; the tenant has failed to prove that the landlord failed to comply with the tenancy agreement or the *Residential Tenancy Act*.

With respect to the tenant's claim for cleaning the rental unit, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of a tenancy, and I find that the tenant has not proven that the landlord should bear that cost.

I further find that the tenant has failed to establish any of the elements in the test for damages with respect to the claim for pain and suffering. I accept that the tenant suffers from chronic pain and that the parties had a difficult tenancy agreement between them, however, there are no medical reports or evidence that the landlord failed to comply with the *Act* or the tenancy agreement causing additional pain and suffering for the tenant.

The tenant also described a loss of quiet enjoyment due to the landlord's barking dog and the landlords' children being in the rental unit playing pool. The tenant was asked if she ever spoke to the landlord about it, she replied that she could not remember. I find that the tenant has failed to establish element 4 in the test for damages. If the landlord was told of the disruption, the tenant could be found to have mitigated the claim, but by

not even speaking to the landlord about it, I find that the tenant has not established the claim.

The landlord testified that the cable was never turned off and that the internet was down for a week until the router was replaced. Where a party disputes a claim, the onus is on the claiming party to prove it. I find that the tenant has failed to establish that the cable was turned off or the amount that one week of being without internet was worth.

Further, having found that there is no written tenancy agreement that was signed by either of the parties, I am not satisfied that either cable or internet was included in the rent.

With respect to the dispute of the security deposit, the tenant's documentation claims that \$400.00 was paid to the landlord on October 8, 2013 and the landlord claims that the tenant never paid a security deposit. The notice to end tenancy shows that it was issued for failure to pay it. The tenant testified that the tenancy started on October 29, 2013 and her documentation states that she was permitted to move in on October 12, 2013 so that she wouldn't have to move in on Hallowe'en. Based on the tenancy agreement created by the tenant, I find that the tenant paid the \$400.00 for rent from mid-October to the end of October, and that the \$400.00 did not amount to a security deposit. Therefore, the tenant's application for return of the \$400.00 cannot succeed. I find that the tenant did not pay a security deposit.

With respect to the landlord's claim for the cost of the bookcases, I find that the landlord has failed to establish element 3 in the test for damages. There is no evidence that similar bookcases cost that amount or what shape they were in.

### Conclusion

For the reasons set out above, the applications of the landlord and of the tenant are hereby dismissed in their entirety 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: March 21, 2014

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Residential Tenancy Branch

