



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Widsten Property Management Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**MNDC, MNSD, FF**

### **Introduction**

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting compensation for damage or loss under the Act; return of the security deposit and to obtain an Order of possession for the unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The parties confirmed receipt of each other's hearing package and evidence submissions. The landlord did not dispute the tenants' late evidence submission.

### **Preliminary Matter**

At the start of the hearing the tenant asked to increase his monetary claim by \$500.00. As the application was not amended and served to the respondent, in accordance with the Rules of Procedure, the request to amend was declined.

The tenant has claimed \$1,100.00 for the preparation of his application; writing services (100 pages), case statement (6 pages) and further writing service (100 pages.) An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims, under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the tenant's claim is denied. I note that the tenant confirmed he created the invoices; no evidence of the two hundred pages of evidence was provided.

The tenant withdrew his request for an Order of possession.

The balance of the tenant's claim has been considered.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$900.00 as the result of illegal eviction?

Is the landlord entitled to damage or loss under the Act in the sum of \$108.04 for cleaning and \$350.00 in liquidated damages?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The 1 year fixed term tenancy commenced on July 1, 2013; rent was \$600.00 per month, due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$300.00 was paid. There were 2 co-tenants. A copy of the tenancy agreement was supplied as evidence.

Clause 5 of the tenancy agreement indicated:

*"If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of the any fixed term, or if the tenant provides the landlord with notice, whether written, oral or by conduct, of an intention to breach this Agreement and end the tenancy by vacating and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$350.00 as liquidated damages."*

A copy of the move-in condition inspection report was supplied as evidence.

On August 28, 2013 the tenants received a 1 month Notice to end tenancy for cause; on September 11, 2013 the tenants applied to dispute that Notice and as a result of an October 23, 2013 hearing and decision, the Notice was set aside. The October 23, 2013 decision indicated that no finding had been made in relation to the end of the tenancy.

On September 5, 2013 the female co-tenant gave the landlord written note that she was vacating the unit and provided permission for the landlord to change the locks and dispose of all items in the unit effective September 30, 2013.

The landlord accepted the September 5, 2013 note as notice both tenants would be vacating and on September 9, 2013 a letter was issued to the tenants, providing a condition inspection date and time and cleaning expectations.

The tenant said that he did not want to leave the unit and that he was forced to move as the landlord threatened to change the locks and dispose of his property. The tenant said he vacated, but did so only as a result of his fear that his personal property would be seized by the landlord. The tenant said he was tricked by the landlord, that he was told to leave and that this caused the tenant to vacate the unit. October 2014 rent had been paid.

The tenant's written submission indicated that his female co-tenant signed the note ending tenancy, but was "barely aware of what she was signing." The tenant was not originally aware his co-tenant had signed the note giving her notice ending the tenancy.

The tenant has requested return of October 2013 rent in the sum of \$600.00. The tenant supplied invoices that he created as part of a business he owns. The tenant issued an invoice in the sum of \$500.00 for moving expenses at \$100.00 per hour.

The landlord went to the rental unit at 1 p.m. on September 30, 2013 to complete the condition inspection report with the tenant; the tenant was not ready to complete the report. The landlord told the tenant he would return at 4 p.m. to complete the report. When the landlord went to the unit at 4 p.m. the tenant was not at the unit; the report was completed in the absence of the tenant. On the next day the keys were dropped off by the tenant.

The landlord said they accepted notice from the female co-tenant and that they did tell the male co-tenant the tenancy was ending. The landlord said they did not say they would change the locks to the unit and they would not have done so if the tenant had remained in possession of the unit.

The landlord supplied a copy of an October 8, 2013 invoice for cleaning completed on October 1, 2013. The invoice indicated a \$15.00 fee for garbage removal, a \$6.90 dumping fee and \$81.00 for cleaning. GST was charged.

The landlord said that they accepted October 2013 rent as the tenant continued to be responsible for the fixed term tenancy. The landlord was able to mitigate by locating a new occupant effective November 1, 2013.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the end of the tenancy, there was no dispute that the female co-tenant gave notice she would vacate the unit effective September 30, 2013 and that she gave permission allowing the landlord to change the locks to the unit on that date. However, this co-tenant did not have the authority to end the fixed term tenancy. A tenant may only end a fixed-term tenancy in accordance with section 45 of the Act; which limits notice to the end of the fixed term or in cases where the landlord has breached a material term of the tenancy.

Residential Tenancy Branch policy suggests:

*Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written*

*agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect*

There was no mutual agreement signed between the parties, ending the tenancy, but the landlord proceeded as if a mutual agreement had been reached. I find that policy takes a reasonable stance and that the co-tenant who vacated would continue to be jointly and severally responsible for the terms of the tenancy agreement.

The male tenant had disputed a 1 month Notice ending tenancy and made his application for dispute resolution prior to the end of September 2013. This was followed by a hearing held on October 23, 2013 that resulted in cancellation of the Notice. The arbitrator declined to make a finding in relation to the end of the tenancy and by that date the tenant was no longer residing in the unit; but he had paid rent. The tenant then applied requesting compensation and an Order of possession because he vacated the unit on September 30, 2013 as a result of what he believes were threats made by the landlord.

I find that when the landlord determined the tenancy had ended effective September 30, 2013, the acceptance was based on notice that did not comply with the legislation. In cases of periodic tenancies the landlord may accept notice given by 1 co-tenant as the equivalent of notice by all. A landlord may only end a fixed term tenancy for limited reasons such as cause or unpaid rent, but not on the notice given by 1 co-tenant. Therefore, the male co-tenant was free to remain in the rental unit and both co-tenants would continue to be responsible for the terms of the agreement.

I have rejected the tenant's submission that he was forced from the rental unit. The landlord told him he must leave, but the tenant was not required to follow that direction. If the tenant had remained in the unit the tenancy could have continued, in accordance with the legislation. The tenant has the burden of proving that he was forced from the rental unit and I find that his failure to understand his rights as a co-tenant, who signed a fixed-term agreement, is insufficient to entitle the tenant to compensation. If the landlord had change the locks to the unit or somehow denied the tenant access to the home the tenant could have pursued an Order of possession and compensation. The legislation does not contemplate compensation as a result of a party's lack of knowledge of their rights and obligations. Therefore, I find that the tenant's application requesting compensation is dismissed.

Pursuant to section 44(f) of the Act, I find that the tenancy ended effective October 31, 2013. The tenant had paid rent for that month and was not required to vacate.

I do find that the landlord bears some responsibility for proceeding as if the tenancy had ended. Therefore, pursuant to section 62(3) of the Act, as the landlord did tell the tenant to vacate, I find that the claim for liquidated damages is dismissed. The landlord treated the tenancy as if it were at an end, but the tenant had paid rent and did not have to surrender the keys to the unit.

As the landlord effectively entered the rental unit prior to the end of the tenancy, I find that the claim for cleaning is dismissed. The landlord had been given October 2013 rent and could have scheduled an inspection for a date following notice given by the tenant at the end of the fixed term agreement.

Therefore, I find that the landlord's claim is dismissed and Order the deposit returned to the tenant. Policy suggests that when a landlord claims against a deposit and that claim fails, an Order may be made returning the deposit to the tenant.

Based on these determinations I grant the tenant a monetary Order for return of the \$300.00 security deposit. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The tenant's application is dismissed.

The landlord's application is dismissed.

The tenant is entitled to return of the security deposit.

Filing fees are declined.

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 03, 2014

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Residential Tenancy Branch

