



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- an Order of Possession of the rental unit pursuant to section 54.

The landlord did not attend this hearing, although I waited until 11:19 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that he received a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) when the landlord let himself into his rental unit and placed the Notice on his bed. He said that he received this 10 Day Notice for unpaid rent of \$466.00 on February 27, 2014. Although the landlord's method of serving the tenant with the 10 Day Notice contravened the *Act*, the tenant did confirm that he was served with this document.

The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on March 7, 2014. He provided the Canada Post Tracking Number to confirm this registered mailing and testified that it has not been returned to

him by Canada Post. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the dispute resolution hearing package on March 12, 2014, the fifth day after its registered mailing by the tenant.

The tenant submitted very late written evidence to the Residential Tenancy Branch (the RTB) on March 18, 2014, the day before this hearing. At the hearing, the tenant testified that he attempted to serve this written evidence to the landlord by attaching it to the windshield of the landlord's car, by sending it by email, and by sending it to the landlord as a PDF document on the landlord's Facebook account. I advised the tenant at the hearing that none of the methods identified by the tenant for the service of his written evidence complies with the provisions of section 88 of the *Act* for serving written evidence to another party. As such, I do not consider the landlord served with the tenant's written evidence. I have not considered the tenant's late written evidence. The only written evidence I have been able to take into consideration is the 10 Day Notice entered into written evidence by the tenant at the time he filed with his application for dispute resolution.

#### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and damages arising out of this tenancy? Should any other orders be issued against the landlord with respect to this tenancy?

#### Background and Evidence

The tenant gave undisputed sworn testimony that he first moved into this rental unit with two existing tenants on February 1, 2013. He testified that in July 2013, he signed a Residential Tenancy Agreement adding his name to those of the two other tenants then living there. He said that by the start of January 2014, he and another tenant were each living in separate rooms in this rental suite. Each tenant was paying \$466.00, for a total monthly rent of \$932.00.

The tenant testified that the landlord who purchased this rental property in December 2013 to take possession on February 1, 2014 refused to sign a Residential Tenancy Agreement with either him or his then roommate. However, the tenant said that he and his roommate did sign a new written agreement with the former owner on January 23, 2014. According to the terms of this agreement, a copy of which was not entered into written evidence by the tenant, the tenants were allowed to pay one-third of their scheduled monthly rent for February 2014 and were allowed to stay in the rental unit at no cost for March 2014. The tenant said that the current landlord who took possession of the rental unit on February 1, 2014 did not honour the terms of the agreement signed by the previous owner on January 23, 2014.

The tenant gave undisputed sworn testimony that the landlord advised him after leaving the 10 Day Notice on his bed on February 27, 2014, that if the tenant did not pay the rent owing for February 2014, then \$466.00, the landlord would seize all of his personal possessions the following day and place a new lock on the tenant's room. The tenant said that he vacated the rental unit on February 28, 2014 because he was very concerned that the landlord would act on his threat to padlock his door and throw all of his possessions out. The tenant said that he rented a moving truck for \$80.00 and had friends help him move. He testified that he took one load of his possessions with him and put these in a storage locker which he rented at a monthly cost of \$80.00. He testified that he was somewhat traumatized by this sequence of events and is currently staying with friends following his hasty eviction. The tenant said that he paid \$233.00, one-half of his \$466.00 rent for February 2014. He testified that his roommate paid her full February 2014 rent, but has vacated the rental unit because of her concerns about the landlord's actions and illegal entries to the rental unit.

The tenant testified that he returned to the rental property on March 5, 2014 to retrieve the remainder of his possessions, including his bed, boxspring and a number of tools, used of his artwork. He discovered that the landlord had changed the locks and thrown his property outside, damaging some of his possessions in the process. He estimated the value of his destroyed artwork tools at \$150.00, noting that his bed and boxspring were also damaged when the landlord removed them from his rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord caused the damage.

The tenant's failure to serve written evidence to the landlord in a manner allowed under the *Act* left the tenant in the position whereby all of his claims with respect to damage and losses relied solely on his undisputed sworn oral testimony.

I first find that any written agreement signed by the previous owner of this property on or about January 23, 2014 has no legal effect. The previous owner cannot purport to bind a person he has sold property to terms regarding the payment of rent for February or

March 2014 that were not agreed to at the time of the sale. Based on the tenant's sworn testimony, the former landlord sold his interest in the property to the current landlord in December 2013, with the transfer of the property scheduled to take place on February 1, 2014. By January 23, 2014, the two tenants and the former landlord knew that the property was to change ownership on February 1, 2014. Under such circumstances, a former landlord poised to yield ownership of the property a few days later to a new owner would be in no legal position to enter into a new contract with the tenants without the expressed authorization of the purchaser who was to take possession on February 1, 2014. In addition, a contract needs to offer consideration between the parties in order to be effective. As described by the tenant at the hearing, no consideration was exchanged by the tenants in order to obtain significantly reduced rent for February 2014 and free rent for March 2014. As the agreement allegedly reached between the tenants and the former landlord had no legal effect, I find that the correct rent for February 2014 for this entire rental unit (i.e., by both tenants) was \$932.00, the amount stated in the Residential Tenancy Agreement in place at the time that the current landlord purchased the rental property in December 2013.

Based on the tenant's testimony, I find on a balance of probabilities that the landlord illegally entered the rental unit on February 27, 2014. I also accept the tenant's undisputed sworn testimony that the landlord threatened the tenant with almost immediate eviction, in contravention of the *Act* and the tenancy agreement that was then in place. I find that the tenant ended his tenancy in understandable fear that the landlord would follow through with his threat to change the locks and seize the tenant's personal possessions. The landlord did not follow the provisions of the *Act* to obtain an Order of Possession nor did the landlord comply with the requirements of the *Act* in taking adequate care of the tenant's possessions that remained in the rental unit following the tenant's departure from the rental unit on February 28, 2014.

Section 72(2) of the *Act* reads in part as follows:

*72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*

*(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord,...*

I find that the tenant admitted that he paid only \$233.00 in rent for February 2014. As noted above, I find that the tenant's portion of the total \$933.00 monthly rent for February 2014 for this rental unit was \$433.00. I accept the tenant's undisputed sworn

testimony that all but \$233.00 of this monthly rent was paid to the landlord for that month.

Based on a balance of probabilities, I find that the tenant's undisputed sworn testimony regarding the actions taken by the landlord satisfy me that the tenant is entitled to a monetary award for losses and damages arising out of the landlord's actions in clear contravention of the *Act*. I find that it is quite possible that the tenant's actual losses may far exceed the \$233.00 in outstanding rent that the tenant admits remains owing from this tenancy. Had he presented documentation in this regard, the tenant may very well have been entitled to a significantly higher monetary award. However, the tenant has failed to provide documentation to support his claim for a monetary award of \$600.00. In the absence of this documentation and in accordance with sections 67 and 72(2) of the *Act*, I limit the monetary award issued in the tenant's favour to the rent that remains owing from this tenancy. As such, I issue no monetary award in either parties' favour. To be clear and to establish closure on this troubled tenancy, I further find that there is no further monthly rent owing with respect to this tenancy.

As the tenancy has ended, the remaining portions of the tenant's application are moot and there is no reason to consider them as part of my decision.

#### Conclusion

I find that the tenant is entitled to a monetary award in the amount of the rent remaining owing from this tenancy. As the unpaid rent and the tenant's eligibility for a monetary award counterbalance one another, I issue no monetary Order regarding this application.

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 24, 2014

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Residential Tenancy Branch

