



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes O, OLC, OPT, RPP, MNDC, FF, MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order of possession of the rental unit or site; for an order that the landlord return the tenant's personal property; 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 landlord for the cost of the application.

The landlord and the tenant both attended the hearing and each gave affirmed testimony. The parties also provided evidentiary material prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided.

The parties have not exchanged evidence that has been received by the Residential Tenancy Branch. In determining the admissibility of evidence, I found that both parties evaded service and ordered that all evidence will be considered in this Decision.

A letter is contained in the tenant's evidence that states on April 29, 2014 the landlord told the tenant that the landlord knows someone who works at the Residential Tenancy Branch and the tenant has concerns regarding bias because of that relationship. The tenant did not speak to that concern during the hearing. Whether or not the landlord does know someone who works at the Residential Tenancy Branch, that person is not me. In the event that a party is personally known to an Arbitrator, the Arbitrator must apply certain ethics to ensure that no party is unfairly advantaged. I find that the allegation is not supported by any evidence and this Decision is based on the evidence and the testimony of the parties herein alone.

During the course of the hearing the tenant withdrew the claim for an Order of Possession of the rental unit or site. Further, during the course of the hearing the

tenant applied to amend the application to include an application for a monetary order for return of all or part of the pet damage deposit or security deposit. The landlord did not object to the amendment, and the amendment is allowed.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established that the landlord should be ordered to return the tenant's personal property?
- 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 aggravated damages?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on March 21, 2014 and ended on May 7, 2014. Rent in the amount of \$520.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. No written tenancy agreement was signed by the parties, however the landlord collected a security deposit from the tenant in the amount of \$520.00 on or about April 1, 2014. The unit rented is a room in a rental unit that the landlord rents from another landlord.

The tenant has also provided a copy of an email sent by the tenant to the Residential Tenancy Branch. In that email the tenant claims that the landlord insulted the tenant on several occasions stating that the tenant is, "...cheap, stupid, idiot and will never be happy in your fucking life." The email also states that the landlord has threatened to contact the tenant's employer which would severely damage the tenant's character and reputation as a university professor, professional engineer and project management designated professional.

The tenant testified that he had advised the landlord that he would be moving out of the rental unit effective June 28, 2014 by way of an email dated April 30, 2014. The landlord replied the same day advising the tenant that if the tenant moved by 7:30 p.m. that day, the deposit would be returned at 7:31 p.m. and that the tenant had previously given notice to the landlord by email on April 17, 2014. Copies of the emails have been

provided. A second email from the landlord was also received by the tenant dated April 30, 2014 stating that the landlord intended to terminate the tenancy, and that if the landlord terminated the lease with her landlord, the tenant would also have to vacate. The email also states that the landlord is afraid of the tenant and did not wish to be roommates anymore.

The tenant further testified that the landlord refused the tenant's electronic transfer of rent on May 6, 2014. Also, the tenant sent the landlord letters by registered mail and each of the envelopes contained the tenant's forwarding address, but the landlord refused to the mail. On May 3, 2014 the locks to the rental unit had been changed by the landlord.

On May 22, 2014 the tenant went to the rental building to retrieve the rest of the belongings but did not receive them. The tenant applies for an order that the landlord return the tenant's personal property.

The tenant claims \$15,000.00 for aggravated damages for the landlord's actions in refusing entry to the rental unit by changing the locks prior to the end of the tenancy and for insulting the tenant and threatening to contact the tenant's employer which would severely damage the tenant's character and reputation as a university professor, professional engineer and project management designated professional.

The landlord testified that the parties made a verbal tenancy agreement on March 21, 2014.

The landlord received a text message from the tenant on April 17, 2014 which stated that the tenant was moving out on May 10, 2014. The landlord responded by email on April 19, 2014 stating that the tenant could stay longer, but the tenant declined the offer. On April 21, 2014 the tenant emailed the landlord stating that the effective date of vacancy would be June 28, 2014. The landlord had secured a new tenant for May 11, 2014 so replied to the tenant that they should discuss the matter. The parties met in a restaurant on April 23 but no agreement was made with respect to the end of the tenancy date; the tenant left abruptly because of the waiter.

On April 29, 2014 the police were called to the rental unit. The tenant had told the police officer that the landlord had threatened the tenant but really wanted the police to settle the dispute between the parties with respect to the end date of the tenancy. The police were annoyed. The next day the tenant emailed the landlord stating that he was moving at 3:00 p.m. The landlord returned to the rental unit to get the keys from the

tenant and return the security deposit. At that time the tenant was not there and almost all of the tenant's items had been removed from the rental unit. The locks were changed on May 1, 2014.

On May 22, 2014 the landlord emailed the tenant advising that the tenant could pick up the remaining belongings between 6:15 and 6:30 p.m. in the parking lot of the rental complex. The landlord arrived with a friend and noticed the tenant's car but no one was in it. The landlord waited for about 10 minutes and then went to the lobby inside the building, leaving the friend with the tenant's belongings, and saw the tenant. The tenant told the landlord the tenant wanted the landlord to sign some sort of end of tenancy agreement and move-out condition inspection report. The landlord refused to sign anything and told the tenant that the belongings were in the parking lot. The tenant left the lobby through an alternate exit and the landlord left the belongings. The landlord testified that the tenant's belongings were of no value and consisted of flip flops, a towel, a shoe rack, a decorative bowl, a garbage pail, and a gallon of distilled water.

### Analysis

Firstly, with respect to the tenant's application for an order that the landlord return the tenant's personal property, the landlord testified that the parties had agreed on a time and place to meet for its return, but the tenant neglected to get it. The landlord also testified that the property was of little or no value and specified the items. The tenant did not dispute that testimony. In the circumstances, I find that the tenant failed to mitigate any loss and has not been aggrieved by the loss of the items, and the landlord no longer possesses any items belonging to the tenant. The tenant's application is hereby dismissed without leave to reapply.

With respect to the tenant's application for a monetary order for aggravated damages, I have reviewed the material provided by the parties and find that neither party has given the appropriate notice to end the tenancy, nor did the parties sign a Mutual Agreement to End the Tenancy. I find that both parties have failed to comply with the *Residential Tenancy Act*. The tenant claims \$15,000.00 but has not provided any evidence that any actions taken by the landlord that were not in compliance with the *Act* have aggrieved the tenant in any manner, and the tenant's application is dismissed.

With respect to the tenant's application for return of the security deposit, the tenant testified that the landlord collected \$520.00 and the landlord did not dispute that testimony. The *Act* requires a landlord to return a security deposit in full or apply for dispute resolution to claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. Having found that both parties have evaded service from the other, I am not satisfied when the

landlord may have received the tenant's forwarding address in writing. Therefore, I find that the tenant is entitled to recovery of the \$520.00.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

The tenant did not lead any evidence dealing with the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss that application without leave to reapply.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$570.00.

The balance of the tenant's application is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: June 25, 2014

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Residential Tenancy Branch

