



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for damage or loss under the *Residential Tenancy Act* (the “Act”) and for the return of the security deposit.

The agent for the company named on the Application (the “Landlord”) and the Tenant appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing.

### Preliminary Matters

The Landlord confirmed receipt of the Tenant’s Application and written evidence which was served by registered mail. However, the Tenant denied receipt of the Landlord’s written evidence.

As a result, I turned my mind to the service of the Landlord’s written evidence under the Rules of Procedure. The Landlord testified that he served the Tenant and the Co-tenant (not named on the Application) with the written evidence by registered mail and provided the Canada Post tracking numbers as written evidence for this method of service. The Landlord testified that he had sent this to the address provided by the Tenant on her Application which was confirmed during the hearing.

However, the Tenant testified that the address documented on the Application was a **residential address** where she is unable to receive mail. I pointed the Tenant to the Application where it requires the Applicant to provide the **mailing address** if it is different to the address listed on the Application. The purpose of a mailing address on an Application is to put the Respondent on notice that any document served by mail in relation to the dispute proceedings must be sent to this address. However, the Tenant failed to provide a mailing address.

The Landlord provided sufficient evidence that he had served his written evidence to the Tenant in accordance with the Act and the Rules of Procedure. I also note that the majority of the Landlord's written evidence consisted of written submissions which were also provided during the hearing. As a result, I decided to continue the hearing with the Landlord's written evidence.

The Tenant's Application seeks the return of a \$200.00 security deposit which the parties agreed was the amount paid by the Tenant on January 16, 2014 and which the Landlord still retains.

The Landlord had submitted an Application (the file number for which appears on the first page of this decision) on February 21, 2014 for an Order of Possession and a Monetary Order for unpaid rent based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). This Application was processed through the Direct Request Proceedings pursuant to Section 55(4) of the Act. As a result, the Landlord was successful in obtaining a Monetary Order and an Order of Possession in the amount of \$800.00 for February, 2014 unpaid rent.

The Landlord testified that he had served the orders to the Tenant by registered mail. However, it came to his attention on February 26, 2014 the Tenant had abandoned the rental suite without providing written notice, a forwarding address in writing or completing a move out condition inspection report. The Landlord confirmed that the \$800.00 for unpaid rent for February, 2014 still remains unpaid by the Tenant.

The Tenant acknowledged receipt of the Notice but could not confirm the date it was served. The Tenant explained that they left the rental suite due to harassment by the Landlord on February 13, 2014 and that she had not been served with any Monetary Order. However, the Tenant admitted that the \$800.00 for February, 2014 was still unpaid and that she did not pay this on the instruction of several Information Officers at the Residential Tenancy Branch.

The Tenant argued that the Landlord had failed to deal with her security deposit at the end of the tenancy as required by the Act. The requirement of the Landlord to deal with the Tenant's security deposit at the end of the tenancy is detailed in Section 38 of the Act.

Section 38(1) explains that when the tenancy ends, the Tenant is required to provide the Landlord with a forwarding address in writing and the obligations of the Landlord to deal with the Tenant's security deposit do not begin until the Tenant's requirement is satisfied.

The Tenant provided no written evidence to support the fact that she had provided the Landlord with a forwarding address after the tenancy had ended and even if she had, Section 38(1) states that it does not apply **if Section 38(3) is in effect**. Section 38(3) states that “A Landlord may retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the Tenant to pay to the Landlord, and at the end of the tenancy remains unpaid.”

The parties provided conflicting evidence around the exact date the tenancy ended and there was not sufficient evidence before me to determine this date. However, I do find that the Landlord was issued with a Monetary Order for the Tenant to pay rent for the month of February, 2014 and that this was issued to the Landlord before the tenancy was due to end under the written tenancy agreement (March 31, 2014).

The Tenant acknowledged that rent had not been paid to the Landlord for February, 2014. Therefore, pursuant to Section 38(3) of the Act, I find that the Landlord is able to keep the Tenant’s security deposit in partial satisfaction of the \$800.00 of unpaid rent previously ordered by the director. As a result, I dismiss this portion of the Tenant’s Application and continue to hear the remainder of the Tenant’s monetary claim as follows.

#### Issue(s) to be Decided

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and make submissions to me. I have reviewed the oral and written evidence before me, but only the evidence relevant to the issues and findings in this matter are described in this decision.

- Is the Tenant entitled to monetary compensation for alleged harassment by the Landlord in the amount of \$200.00?

#### Background and Evidence

The parties agreed that this tenancy started on January 1, 2014 for a fixed term of three months after which time the Tenant was required to vacate the rental suite. A written tenancy agreement was completed which required rent to be paid by the Tenant in the amount of \$800.00 on the first day of each month.

The Tenant testified that the Landlord had harassed her through disruptive and bullying behavior.

The Tenant referred to a 'cat' incident and testified that the Landlord had consented to her having cats in the rental suite. As a result, the Tenant purchased some cats but the cats struggled with the transition the rental suite. The Tenant explained that she had a conversation with the cats' owner and they agreed that the cats would be returned but no date was set for this to take place.

The Tenant testified that shortly after this time, the cats' owner appeared at her rental unit door with the Landlord and barged her way into the suite where a verbal altercation took place. The police were called and facilitated the return of the cats. The Tenant submits that the Landlord put her safety at risk by bringing the cats' owner to her rental suite door.

The Tenant testified that the Landlord has a habit of issuing her excessive written notices on her door regarding entry into the rental suite and parking and fire safety warnings. The Tenant testified that the Landlord issued her a notice about her having a propane tank on her balcony and explained that this was for her barbeque which she was allowed to have.

The Tenant alleged that the Landlord has used a 'young man' to bully and threaten her from his unit. The Tenant testified that the Landlord has harassed her by constantly slamming doors and having loud parties causing her a lack of sleep and loss of wages. The Tenant submitted that the Landlord has slandered her by bad mouthing her to other Tenants.

The Tenant provided no written evidence to support the above testimony but explained that she can gather and provide this evidence after the hearing.

The Landlord testified that that the cats' owner was let into the building by staff after she purported to be there to view a rental suite. After she had entered the building, the Landlord came upon her at which point she asked to go to the Tenant's rental suite because she had made arrangements to get her cats back with the Tenant. The Landlord testified that he was not aware that the Tenant had cats and he accompanied the cats' owner to the Tenant's rental suite to get them back.

The Landlord testified that when the cats' owner knocked on the door and the Tenant opened it, the cats' owner barged into the Tenant's rental suite and demanded the return of the cats. The Landlord explained that the Tenant had been authorised to have cats in the rental suite but she had to have written permission after providing medical certifications for the cats for which she did not. I also note in the written tenancy

agreement that there is a clause which states that no pets are allowed unless approved by the Manager.

The Landlord submitted that he had issued the Tenant several written notices but these were all notices that he was required to provide under the Act, such as a notice to inspect the Tenant's rental suite; the Landlord provided a copy of this notice as an example in written evidence. The Landlord submitted that it was better to communicate these notices in writing by attaching them to the rental suite door because it avoided confrontation if the notices were to be personally served.

The Landlord denied the Tenant's testimony in relation to the harassment and submitted that the Tenant was the one that created disturbances in the building and that she had mental health issues. The Landlord referred to a text message provided in written evidence from the Tenant where she uses offensive language to communicate with the Landlord.

### Analysis

A party that makes an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on sufficient evidence that gives rise to a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Tenant makes a monetary claim for harassment by the Landlord in the amount of \$200.00. Policy Guideline 6 to the Act explains harassment as follows:

"Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser".

[Reproduced as written.]

In relation to the 'cat' incident, I find that this incident alone is not sufficient evidence that the Landlord harassed the Tenant. I accept the Landlord's evidence that he did not accompany the cats' owner with malicious intent knowing that an altercation was going

to ensue with the Tenant; rather that he was there to accompany the cats' owner to the rental suite. Furthermore, it was the cats' owner that was involved in the altercation and not the Landlord.

The Act requires a Landlord to serve notices using the methods outlined in Section 88 of the Act; a Landlord may serve a notice by attaching it to the door. The Tenant failed to disclose sufficient evidence that the notices were not appropriate and how the serving of such notices caused her harassment. Furthermore, I accept the Landlord's evidence that the serving of notices by attaching them to the Tenant's door was appropriate in order to prevent an altercation if personal service were to be used instead.

In relation to the remainder of the Tenant's disputed evidence, I find that this results in one party's word against the others and I find that the Tenant has not established, on the balance of probabilities, the Landlord engaged in a course of action that involved ongoing and repeated activity.

In relation to the Tenant's claim for lost wages, I find that the Tenant has failed to verify this loss. In the absence of supporting evidence to prove the Tenant's oral testimony which was disputed by the Landlord, I find that the Application must fail.

The Tenant explained that she could provide supporting written evidence for the above testimony after the hearing. However, a party making a monetary claim must supply all the evidence they intend to rely upon before the hearing takes place in accordance with the Rules of Procedure.

### Conclusion

As the Tenant has failed to provide sufficient evidence to prove the Landlord harassed her, I dismiss the Tenant's Application **without** leave to re-apply.

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: July 23, 2014

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Residential Tenancy Branch

